

## Title 16, Division 4. Board of Chiropractic Examiners.

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (hereafter "Board") is proposing to add regulations described in the Informative Digest below. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Board of Chiropractic Examiners at its office no later than 5:00 p.m. on March 10, 2014.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office no later than 15 days before the close of the written comment period.

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.

Authority and Reference: Pursuant to the authority vested by sections 1000-4(b) and 1000-10 of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii), and section 901 of the Business and Professions Code and to implement, interpret or make specific sections 1000-4(b) and 1000-10, of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii); sections 480 and 901 of the Business and Professions Code; section 11105 of the Penal Code; and, Title 16, California Code of Regulations sections 317 and 321.1, the board is considering changes to Title 16, Division 4, of the California Code of Regulations as follows:

### INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The Board currently regulates 13,394 doctors of chiropractic. The Board's highest priority is protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violating the provisions of the laws, regulations and Chiropractic Initiative Act (Act) that govern the practice of chiropractic; and monitoring licensees whose license has been placed on probation.

The Chiropractic Initiative Act Section 1000 – 4(b) authorizes the board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

Business and Professions Code (BPC) section 901 provides an exemption for a health care practitioner, licensed or certified in another state, from the licensing and regulatory requirements of the applicable California healing arts board. To be exempted from

California licensure requirements, a health care practitioner may provide services at a sponsored healthcare event to uninsured or underinsured people on a short-term, voluntary basis. Section 901 requires the out-of-state health care provider to seek the regulatory framework for the approval of an out-of-state health care practitioner and a sponsoring entity to seek approval from the applicable healing arts boards. However, each individual healing arts board is responsible for promulgating regulations to prescribe the specific requirements for the approval of an out-of-state practitioner and a sponsoring entity.

The primary purpose of these proposed regulations is to implement, interpret and make specific the provisions of BPC section 901, as it pertains to licensed doctors of chiropractic, including the application and registration requirements, disciplinary actions, recordkeeping requirements and provisions for termination for the exemption of an out-of-state licensed doctor of chiropractic who wishes to participate in a sponsored free health care event. The Registration of Sponsoring Entity Under Business and Professions Code Section 901, Form 901-A (DCA/2011) and the Request for Authorization to Practice Without a License at a Registered Free Health Care Event, Form 901-B (BCE/2013) are incorporated by reference. This proposal is intended to implement BPC section 901 in a manner that is consistent with the Board's highest priority of providing protection to the public.

The Board is proposing the following changes:

1. Adopt Article 1.5. Sponsored Free Health Care Events – Requirements for Exemption.

This proposal would add a new Article 1.5 and title, designated specifically for placement of the proposed regulations regarding Sponsored Free Health Care Events.

2. Add Section 309. Definitions.

This section would define the terms, "community-based organization", "out-of-state practitioner" and "in good standing". These terms are either not currently defined in statute or require further clarification.

3. Add Section 309.1. Sponsoring Entity Registration and Recordkeeping Requirements.

This proposed section would establish the timeframe for submission of a sponsoring entity's registration form, which is 90 days prior to the sponsored health care event, prescribe the registration form to be used, "Registration of Sponsoring Entity Under Business and Professions Code Section 901", Form 901-A (DCA/2011), and incorporates this form by reference. The "Registration of Sponsoring Entity Under Business and Professions Code Section 901", Form 901-A (DCA/2011) would:

- Part 1 – Require the applicant to disclose the organization name, contact information, type of organization, tax identification number. This portion would also request the organization to disclose whether it is community-based, its mission, goals and activities.

- Part 2 – Require the applicant to provide a list of responsible organization officials, including their name(s), address(es), title(s), phone number(s), and e-mail address(es).
- Part 3 – Require the applicant to disclose event details including the name of the event; date(s) of the event; location(s) of the event; description of the event; a list of all out-of-state health care practitioners the organization currently intends to apply for the event (name, profession, and state of licensure).
- Provide a notice regarding collection and use of personal information provided on the application.
- Provide notice regarding requirements for each out-of-state practitioner practicing at the event, including submission of the required authorization to participate to the applicable licensing board or committee in advance of the event.
- Provide notice of the requirements for the maintenance of records for 5 years in California and for filing a report with the Board within 15 calendar days of completion of the event.
- Require the applicant to certify their statements under penalty of perjury and attest that the individual is authorized to sign on behalf of the organization.
- Require the applicant to submit its application for registration to the Department of Consumer Affairs for processing.

This section would also allow the Board to, by resolution, delegate to the Department of Consumer Affairs (“delegatee”) the authority to receive and process Form 901-A (DCA/2011) on behalf of the Board and specify that the Board shall inform the sponsoring entity within 15 days of receipt that the form is either complete and the entity is registered or that the form is deficient and what specific information or documentation is required to complete the form for approval of the registration. The proposed section allows the Board, or its delegatee, to reject the form if all of the identified deficiencies have not been corrected at least 30 days prior to the health care event. This proposed section implements and makes specific the recordkeeping requirements of sponsoring entities set forth in BPC section 901(g) and clarifies that authorization must be granted before a sponsoring entity may allow an out-of-state practitioner to participate in a sponsored event. This section would also specify the information to be provided in the report required under BPC section 901(f).

#### 4. Add Section 309.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event.

This section would establish a timeframe for submission of an out-of-state practitioner’s request for authorization to participate in a sponsored free health care event, which is not less than 20 days prior to the start of the health care event, prescribes the form to be used for authorization to participate, “Request for Authorization to Practice Without a License at a Registered Free Health Care Event”, Form 901-B (BCE/2013), and incorporates the form by reference. The “Request for Authorization to Practice Without a License at a Registered Free Health Care Event” would:

- Part 1 - Require the applicant to provide a completed application accompanied by a \$59 processing fee (or \$108 if using “ink on cards” for fingerprint

processing), a copy of each current and valid license authorizing the applicant to engage in the practice of chiropractic in another jurisdiction, any documents or statement requested on the application and fingerprints.

- Part 2 – Require the applicant to disclose their name, social security number, contact information, employer, employer's contact information, and the name and location of the chiropractic college from which the applicant graduated.
- Part 3 – Require the applicant to respond regarding current, active and valid licensure in another state, district or territory of the United States; any pending investigations by any governmental entity; any past or pending charges against a doctor of chiropractic license; disciplinary action taken against any healing arts license; surrender of a chiropractic license; malpractice settlements or judgments; criminal convictions; current physical or mental impairment related to drugs or alcohol; and the name(s), date(s), locations and degrees earned of all chiropractic colleges attended.
- Part 4 – Require the applicant to provide the name of the non-profit or community-based organization hosting the event; the name, date(s) and location(s) of the event; the date(s) and location(s) the applicant will be performing healthcare services; the type of healthcare services provided by the applicant; and the name and phone number of the contact person with the sponsoring entity.
- Part 5 – Require the applicant to acknowledge and certify the following: (1) agree to comply with applicable practice requirements and regulations of the Board; (2) agree to practice only within the scope of practice of the applicant's licensure; (3) agree to provide services only to uninsured or underinsured persons at no cost; (4) agree to provide services only in association with the sponsoring entity and the event(s); (5) the applicant has not committed any act or been convicted of any crime constituting grounds for denial of licensure by the Board; (6) the applicant is in good standing with the licensing authority of all jurisdictions in which they hold a license to practice chiropractic; (7) agree to be responsible for knowing and complying with all applicable practice requirements for doctors of chiropractic and all regulations of the Board; (8) agree to post written notice of out-of-state licensure pursuant to Cal. Code of Regs., Title 16, Section 309.4; (9) agree to be responsible for knowing and complying with California law and practice standards; (10) agree to permit the Board to notify the licensing authority of the applicant's home jurisdiction of any potential grounds for discipline associated with the event; (11) acknowledge that practice without proper licensure may subject the applicant to administrative, civil and/or criminal penalties; and, (12) certify that the applicant has read the questions in the application and that all information is true and complete to the best of the applicant's knowledge.
- Provide notification that completion and submission of the application grants permission to the Board to verify and investigate any information provided.
- Provide notification regarding collection and use of personal information provided on the application.
- Provide notification that the applicant's signature on the application authorizes the National Practitioner Data Bank (NPDB) to release any and all information required by the Board.

- Provide notification that authorization will not be granted until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

This section would also set forth the criteria under which the board must or may deny a request for authorization to participate and would provide an appeal process for an applicant who has had a request for authorization to participate denied by the Board.

5. Add Section 309.3. Termination of Authorization and Appeal.

This section would provide the grounds upon which the Board may terminate an out-of-state practitioner's authorization to participate previously granted and specify that written notice of termination, including the basis for termination, shall be given to both the sponsoring entity and the out-of-state practitioner. If the written notice is provided during a sponsored health care event, this proposal would permit the Board to provide the written notice to any representative of the sponsored health care event on the premises. This provision would also set forth the consequences of a termination of authorization to participate and specify the manner in which the Board will report the termination to the NPDB and the applicable out-of-state licensing entity. Lastly, this section would provide the procedure for appealing denials of authorization and terminations of authorization to participate, including an informal hearing under the Administrative Procedure Act (APA) for appeals submitted by out-of-state practitioners.

6. Add Section 309.4. Additional Practice Requirements for Out-of-State Practitioners Authorized to Participate in Sponsored Free Health Care Events.

This section would specify that each out-of-state practitioner authorized to participate in a sponsored health care event must post a notice in a specified font, visible to patients or prospective patients at every station that patients will be seen, providing disclosure of the practitioner's license and authority to participate in the health care event, and provide contact information for the Board.

## POLICY STATEMENT OVERVIEW//ANTICIPATED BENEFITS OF PROPOSAL

The Board's highest priority is protection of the public when exercising its licensing, regulatory and enforcement functions. This proposal is consistent with the Board's highest priority and will enable chiropractic health care services to be provided at sponsored free health care events to uninsured or underinsured Californians who would not otherwise have the ability to obtain health care. This proposal would provide public protection through registration of sponsoring entities and authorization of out-of-state chiropractic volunteers through an application screening process. Additionally, this proposal complies with the provision of Business and Professions Code Section 901, as it sets forth minimum standards for compliance and practice at such events, including the application and registration requirements, disciplinary actions, recordkeeping requirements and provisions for termination for the exemption of an out-of-state doctor of chiropractic who wishes to participate in a sponsored free health care event. This proposal will implement BPC Section 901 in a manner that will provide the greatest protection for the people of California.

## DOCUMENTS INCORPORATED BY REFERENCE:

Registration of Sponsoring Entity Under Business and Professions Code Section 901, Form 901-A (DCA/2011).

Request for Authorization to Practice Without a License at a Registered Free Health Care Event, Form 901-B (BCE/2013).

## CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the board has conducted a search of similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: It is unknown how many sponsors of free healthcare events and how many volunteer out-of-state practitioners may apply to the Board as a result of these regulations. However, the Board estimates that it will receive approximately 5 applications per year from out-of-state doctors of chiropractic seeking authorization to provide services at sponsored free health care events. The Board has determined that a non-refundable fee of \$59 should be charged to cover the cost of processing the applications for volunteer out-of-state practitioners or \$108 for out-of-state practitioners who submit fingerprints via the "ink on cards" format. The state will not incur any costs to implement this proposal as the fee proposed above will cover the Board's cost to process the applications. Additionally, this proposal does not affect any federally State agency or program; therefore, no fiscal impact exists for such entities.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for which Government Code Sections 17630 Require 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 business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations will provide the Board with the means to implement, interpret, and make specific Business and Professions Code section 901, as it pertains to licensed doctors of chiropractic, including application and registration requirements, disciplinary actions, recordkeeping requirements and provisions for termination of authorization for

out-of-state practitioners who wish to participate in a sponsored free health care event. The Board has estimated that this proposal will not have a significant economic impact on the private sector.

Sponsoring entities may incur nominal expenses associated with submission of the registration form to the Board, and compliance with the recordkeeping and reporting requirements. Sponsoring entities shall be responsible for submitting the registration form, "Registration of Sponsoring Entity Under Business and Professions Code Section 901", Form 901-A (DCA/2011) to the Department of Consumer Affairs (DCA). Expenses associated with submitting the registration form include printing and mailing; however, these expenses are minimal and should not have a significant fiscal impact upon sponsoring entities. Additionally, sponsoring entities shall be responsible for maintaining copies of all records required by BPC section 901(g) at the physical location of the sponsored event. Expenses associated with these recordkeeping requirements include storage and transportation of the required records. These expenses are nominal and would not have a significant impact upon sponsoring entities. Finally, the sponsoring entity shall be responsible for providing a report to the Board summarizing the details of the sponsored health care event within fifteen days after the event has concluded. The report may be provided to the Board in a format of the sponsored entity's choosing. Expenses associated with the reporting requirements may include printing and postage. These expenses are minimal and should not have a significant impact upon sponsoring entities.

Out-of-state doctors of chiropractic seeking authorization from the Board to participate in a sponsored free health care event would incur a \$59 application processing fee. Additionally, the applicant will incur costs associated with submission of fingerprints for purposes of allowing the Board to conduct a criminal history check, of which the fees would vary depending on the manner in which the fingerprints are submitted to the Board (i.e. Live Scan vs. "ink on cards"). These costs are necessary for the protection of the public and to provide staff time and resources for registration of sponsored events and volunteer out-of-state practitioners within the short timeframes set in statute.

#### Cost Impact on Representative Private Person or Business:

The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Sponsors of free health care events and out-of-state practitioners will incur minimal costs to apply and register with the DCA and Board in compliance with the statute and these regulations. Out-of-state doctors of chiropractic seeking authorization from the Board to participate in a sponsored event will incur a \$59 application processing fee. Additionally, applicants will incur costs associated with submission of fingerprints for purposes of a criminal history check. The average cost per applicant for fingerprinting via Live Scan is \$63 (\$17 FBI + \$32 DOJ + \$14 Avg. Live Scan vendor fee). Live Scan vendor fees range from \$5 to \$45, for an average fee of \$14; however, this process requires the applicant to visit a Live Scan facility in California. For applicants who are unable to submit their

fingerprints via Live Scan in California, fingerprint “ink on cards” must be submitted to the Board with a \$49 processing fee (\$17 FBI +\$32 DOJ), which is a direct cost determined by and paid to the Department of Justice for conducting the criminal history check. These fees may be covered by sponsoring entities, who will also incur minor costs with respect to maintaining records for their volunteers, reporting to the board after the events and filing a registration.

Effect on Housing Costs: None

Effect on Small Business:

The Board has determined that this regulatory proposal would not have a significant economic impact on small businesses because this impact of this rulemaking proposal is to offer free health care to uninsured or underinsured Californians through the use of volunteer health care practitioners coming from out of state to provide chiropractic services.

Business Reporting Requirement:

The Board finds it necessary for the health, safety, or welfare of the people of this state that the proposed regulations which require a report apply to businesses.

## **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Board has determined that this regulatory proposal would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

The proposed regulations impact volunteer out-of-state licensed doctors of chiropractic who wish to participate with community-based organizations to provide services at sponsored free health care events in California.

The proposed regulations would provide an opportunity for out-of-state licensed health care volunteers to participate in community sponsored free health care events.

Benefits of Regulations:

This regulation would have a positive impact on the health of uninsured or underinsured Californians that are currently unable to receive health care due to lack of funding and resources. These regulations will benefit the health of Californians who attend sponsored events, in addition to providing public protection through registration of out-of-state volunteer doctors of chiropractic.

## **CONSIDERATION OF ALTERNATIVES**

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its 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 policy or other provision of law.

Any interested person may present statements in writing relevant to the above determinations to the address provided above.

### INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the initial statement of reasons, and all the information, upon which the proposal is based, may be obtained upon written request from:

Dixie Van Allen, Program Analyst  
901 P Street, Suite 142A  
Sacramento, California 95814  
(916) 263-5355 x 5329  
Fax (916) 327-0039  
[dixie.vanallen@dca.ca.gov](mailto:dixie.vanallen@dca.ca.gov)

### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the web site, **[www.chiro.ca.gov](http://www.chiro.ca.gov)**.

### CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Dixie Van Allen, Program Analyst  
Address: 901 P Street, Suite 142A  
Sacramento, California 95814  
Telephone: (916) 263-5355 x 5329  
Fax (916) 327-0039  
E-mail: [dixie.vanallen@dca.ca.gov](mailto:dixie.vanallen@dca.ca.gov)

The backup contact person is:

Name: Robert Puleo, Executive Officer  
Address: 901 P Street, Suite 142A  
Sacramento, CA 95814  
Telephone: (916) 263-5355  
Fax: (916) 327-0039  
E-mail: [chiro.info@dca.ca.gov](mailto:chiro.info@dca.ca.gov)

Web Site Address: Materials regarding this proposal can be found at [www.chiro.ca.gov](http://www.chiro.ca.gov).