

# Board of Chiropractic Examiners

## Initial Statement of Reasons

Hearing Date: No Hearing Scheduled

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.

### Introduction:

Health care practitioners, including but not limited to, physicians and surgeons, osteopathic physicians, dentists, nurses, dental hygienists, and chiropractors are required to be licensed in the State of California in order to provide health care services in their respective professions to patients. Existing law, Business and Professions Code (BPC) Section 900, provides an exemption to this rule when health care practitioners provide care during a state of emergency upon request by the Director of Emergency Medical Services Authority. The Chiropractic Initiative Act of California, Stats. 1923 p.1xxxviii, hereinafter referred to as “the Act”, governs the practice of chiropractic in California and does not provide for any additional exemptions from the licensure requirements to practice chiropractic in this state.

The Remote Area Medical (RAM) Volunteer Corps., a non-profit organization that coordinates medical clinics in the United States and worldwide, held a health care event in August 2009 in Los Angeles County. The event provided medical services to more than six-thousand uninsured and underinsured residents. RAM held another event in Los Angeles County in 2010 in which thousands of residents attended seeking medical care, but had to be turned away due to a shortage of volunteer of health care practitioners. Existing law hampered RAM’s effort to provide health care to the most disadvantaged population and if existing law allowed for an exemption for health care practitioners at these types of events, then additional volunteers could have been recruited.

Business and Professions Code (BPC) section 901 was enacted through AB 2699 (Bass, Chapter 270, Statutes of 2010) and took effect January 1, 2011. This statute provides an exemption for health care practitioners, licensed or certified in another state, from the licensing and regulatory requirements of the applicable California healing arts boards. In order to be exempted from California licensure requirements, health care practitioners must provide free services at a sponsored health care event to uninsured or underinsured people on a short-term, voluntary basis, not to exceed 10 days. BPC section 901 requires out-of-state practitioners and the sponsoring entity to seek approval from the applicable healing arts boards. However, each individual

healing arts board is responsible for promulgating regulations to specify the requirements for the approval of out-of-state health care practitioners and a sponsoring entity.

Current legislation, AB 512 (Rendon), was approved by Governor Brown on August 16, 2013, and will extend the sunset date of BPC section 901 to January 1, 2018.

Specific Purpose of each adoption, amendment, or repeal:

The Board currently regulates a total of 13,394 doctors of chiropractic. The Board's highest priority is protection of the public when exercising its authority in licensing, regulatory and enforcement functions. Section 1000-4(b) of the Act authorizes the Board to adopt from time to time such rules and regulations as the Board may deem proper and necessary for the performance of its work, the effective enforcement and administration of the Act, the establishment of education requirements for license renewal, and the protection of the public.

Often times, doctors of chiropractic are the first point of contact or sole point of contact for a patient. As such, their education and training is broad to provide them with the knowledge to treat any condition, disease or injury in any patient, including pregnant women, and to diagnose, so long as the treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and does not constitute the practice of medicine by exceeding the chiropractic scope of practice, as set forth in Title 16, California Code of Regulations (CCR) section 302.

The proposed regulations would implement, interpret and make specific the provisions of BPC section 901 by setting forth the application and registration requirements, disciplinary actions, recordkeeping requirements and provisions for termination of exemptions granted to out-of-state doctors of chiropractic who participate in sponsored free health care events. The Registration of Sponsoring Entity Under Business and Professions Code Section 901, Form 901-A (DCA/2011) and the Authorization to Practice Without a License at a Registered Free Health Care Event, Form 901-B (BCE/2013) are incorporated by reference. The proposed regulations are intended to implement the provisions of BPC section 901 in a manner that will provide the greatest protection for the people of California.

The Board is proposing the following changes:

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

This proposal would add a new Article 1.5 and title specific to "Sponsored Free Health Care Events – Requirements for Exemption." It is necessary to place these regulations in a separate designated article as the proposed regulations pertain to exemptions from licensure in California under very specific conditions.

Adopt section 309. (Definitions) –

This proposal would add a new section 309 of Article 1.5 of Division 4 of Title 16 of the California Code of Regulations to define specific terms included in BPC section 901, but are either not currently defined in statute or require further clarification.

Section 309(a):

This subsection would define a “Community-based organization” specified in BPC section 901 as this term has not been previously defined in statute.

Factual Basis/Rationale:

“Community-based organization” is listed in the statute as one type of sponsoring entity. There is no definition of such an entity in state statute. The proposed definition of this term therefore is derived from a federal law (Title 20 USCA section 7801(6) related to education law) that contains a definition of “community-based organization”. This definition provides clarity to the term and guidance to applicants regarding qualifications for registration.

Section 309(b):

This subsection would define “out-of-state practitioner” specified in BPC section 901 to provide clarification of which practitioners the proposed regulations are intended to affect.

Factual Basis/Rationale:

BPC section 901 defines “health care practitioner” as any person who engages in acts subject to licensure under Division 2 of the Business and Professions Code. The proposed regulations, along with the operative provisions of BPC section 901; however, specifically relate to health care practitioners licensed to practice chiropractic in other states or territories. In order to provide notice regarding the intended purpose and scope of these regulations, “out of state practitioner” is specifically defined according to the criteria set in Section 901.

Section 309(c):

This subsection would define “in good standing” specified in BPC section 901(b) as a requirement for health care practitioner’s licenses or certifications.

Factual Basis/Rationale:

BPC section 901(b) requires a health care practitioner’s license or certification to be “in good standing” in another state or territory to qualify for an exemption from the licensing requirements, but does not define what constitutes a license or certification “in good standing”. This section would provide specific criteria for granting approval by the Board pursuant to BPC section 901 for clarification to applicants who wish to participate in a sponsored free health care event and to Board staff who process the forms.

Section 309(c)(1):

This subparagraph would specify that one criterion for determining that a health care practitioner holds a license or certification “in good standing” is that the practitioner is not currently the subject of any investigation by a governmental entity or has not been charged with an offense for any act substantially related to the practice of chiropractic by any public agency.

Factual Basis/Rationale:

BPC section 901(b) requires a practitioner’s to hold a license or certification “in good standing”; however, provides no criteria for determining this requirement. This proposed subparagraph would provide one specific criterion used for the purpose of defining this requirement. This criterion is also consistent with the Board’s public protection role by prohibiting practitioners who may be under investigation, but not yet charged with an offense from providing health care services to the public in California. This proposal is also consistent with the Board’s authority in BPC section 480 and Title 16, California Code of Regulations section 317(g) to deny an applicant for licensure who has committed any act substantially related to the qualifications or functions of a chiropractor.

Section 309(c)(2):

This subparagraph would specify that a second criterion for determining whether a practitioner holds a license or certification “in good standing” is that the health care practitioner has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon the person’s professional conduct or practice of chiropractic, including any voluntary surrender of license.

Factual Basis/Rationale:

BPC section 901(b) requires a practitioner to hold a license or certification “in good standing”; however, provides no criteria for determining this requirement. This proposed subparagraph further defines the meaning of “in good standing” to include a requirement that the applicant may not have been subject to an administrative decision or any consent agreement that would place conditions upon the applicant’s professional conduct or practice. An applicant may hold a current and active license that contains restrictions or conditions that might place patients at risk or limit the care that they may receive. This proposal would provide public protection by precluding practitioners with conditions or restrictions placed upon their practice from volunteering their services to patients at sponsored health care events.

Section 309(c)(3):

This subparagraph would specify a third criterion to be used in determining whether a practitioner holds a license or certification “in good standing is that the applicant may not have been the subject of an adverse judgment resulting from

the practice of chiropractic that constitutes evidence of a pattern of incompetence or negligence, as determined by the Board. This proposal provides public protection against practitioners who may have numerous incidents resulting in an adverse judgment that do not result in disciplinary action against a chiropractic license.

**Factual Basis/Rationale:**

BPC section 901(b) requires a practitioner to hold a license or certification “in good standing”; however, provides no criteria for determining this requirement. This proposed subparagraph further defines the meaning of “in good standing” to include a criterion that the applicant may not have been the subject of an adverse judgment resulting from the practice of chiropractic that the board determines constitutes evidence of a pattern of practice incompetence or negligence. A practitioner may hold a current, valid license, however, be the subject of an adverse judgment or judgments that reflect a pattern of practice that the Board determines to be incompetent or negligent. This proposal will protect the public by prohibiting out-of-state chiropractors who are the subject of such adverse judgment(s) from providing treatment at sponsored free health care events.

Adopt section 309.1(a) (Sponsoring Entity Registration) –

This section 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 incorporates 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).

**Factual Basis/Rationale:**

Sponsoring entities are required under BPC section 901(d) to register with the board if they will have out-of-state practitioners participating in their sponsored event. This section sets a deadline for sponsoring entities to submit a registration request of not less than 90 calendar days prior to the date on which the sponsored event will begin. This deadline will allow sufficient time for staff review of the registration information and to have the registration in place prior to receipt of participation authorization requests from individual out-of-state practitioners.

The proposed regulation would implement the statute by prescribing a form that sponsoring entities can use to meet this requirement. In 2011, upon review of a Medical Board of California filing, the Office of Administrative Law raised concerns that there was not one common form with a uniform set of regulatory requirements which would, with certainty, allow for the filing of a “single, common form” that meets the regulatory requirements for all healing arts boards at DCA who are subject to BPC section 901. In response, DCA’s healing arts boards have adopted Form 901-A (DCA/2011) as the common form used for the purpose of registering entities who wish to sponsor free health care events pursuant to Section 901. Therefore, on October 29, 2013, this Board voted to adopt a Resolution to formally delegate authority to DCA to receive and

process Form 901-A (DCA/2011) so that the sponsoring entity would be required to submit only one form for registration of a sponsored event rather than individual forms to each healing arts board or committee. The form includes space for all of the information required to be submitted under the statute. 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.

The foregoing form is necessary to create a process for the Board, and its delegatee (the DCA), to implement the requirements of BPC section 901 related to sponsoring entities, and to assist with providing detailed information to sponsoring entity applicants regarding the requirements for seeking and maintaining registration. The certification and disclosure requirements also assist in ensuring accurate, timely and complete information is being provided to the board, and its delegatee, prior to making a decision to grant or deny registration.

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.

**Factual Basis/Rationale:**

Sponsoring entities are required, under BPC section 901(d), to register with the Board. This proposal would allow the Board to delegate the responsibility of receiving and processing requests for registration from sponsoring entities to DCA, thereby allowing the sponsoring entity to submit one registration form for each sponsored event and avoid duplication efforts by healing arts boards in processing these registration requests.

This subsection would also specify timelines for written notification to the sponsoring entity regarding receipt of their registration form and whether the registration was granted or insufficient and the means of correction. These timelines would provide the sponsoring entity with clear timelines and require DCA or the Board to give adequate notice to the entity with clear instruction for completion of insufficient registration forms in a timely manner. The proposed regulation specifies that deficient registration requests will be rejected if the deficiencies are not corrected by the sponsoring entity at least 30 days prior to the commencement of the sponsored health care event. This proposal would provide staff sufficient time to process completed applications, while giving sponsoring entities adequate time to respond to written notification of deficiencies.

Adopt Section 309.1(c) (Recordkeeping Requirements) –

This subsection would implement and make specific the recordkeeping requirements of sponsoring entities set forth in BPC section 901(g).

**Factual Basis/Rationale:**

BPC section 901(g) specifies the records that must be maintained by sponsoring entities and requires sponsoring entities to furnish these records upon request to the Board. In order to implement these requirements, the proposed regulation would specify that these records must be kept both at the physical premises of the sponsoring event and at a location in California for the statutorily required five-year period. Having these records available at the event and thereafter, at a location in California, is necessary in order to provide the Board with the ability to inspect and have easier access to the records. The proposed regulation specifies that the sponsoring entity shall notify the board upon registration whether the records will be maintained in paper or electronic form. This provision clarifies that the Board will accept either form of records.

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

This subsection would clarify that authorization must be received by the Board before a sponsoring entity may allow an out-of-state doctor of chiropractic to participate in a sponsored event.

Factual Basis/Rationale:

BPC section 901 provides authorization requirements for out-of-state practitioners and for registration requirements of sponsoring entities. This proposed regulation would connect the two requirements by clarifying that a sponsoring entity may not permit an out-of-state doctor of chiropractic to participate in its event unless and until it receives authorization from the Board and is necessary to protect the public by ensuring out-of-state practitioners licensing history and criminal history are carefully screened by the Board prior to practicing on patients at a sponsored event.

Adopt section 309.1(e) (Report) –

This subsection would specify the information to be provided in the report required under BPC section 901(f).

Factual Basis/Rationale:

BPC section 901(f) requires a report to be filed with the Board by a sponsoring agency within 15 days after a sponsored event and sets forth the minimum information to be included. The statute, however, does not provide any information as to the form of the report. The proposed regulation would clarify that the report may be in a form of the sponsoring entity's choosing, but must contain specific information to comply with registration requirements. This information required to be contained in the report would include the date of the sponsored event, the location(s) of the sponsored event, the type(s) and general description of all health care services provided at the sponsored event and a list of each out-of-state practitioner granted authorization who participated in the sponsored event. The proposed regulation would also require the report to include the license number of each participating out-of-state practitioner. This information is necessary for the Board to identify and verify compliance with the minimum standards adopted by the Board.

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

This subsection would provide the mechanism by which an out-of-state doctor of chiropractic may request authorization to participate in a sponsored event, and specify that authorization must be obtained for each sponsored event in which the applicant seeks to participate. This subsection would prescribe requests for authorization to participate from each applicant to include a completed "Request for Authorization to Practice Without a License at a Registered Free Health Care Event, Form 901-B (BCE/2013), fingerprints with a fingerprint processing fee or Live Scan inquiry, and a \$59 application processing fee to be submitted to the Board.

Factual Basis/Rationale:

BPC section 901 requires an out-of-state practitioner to request authorization from the Board in order to participate in a sponsored event. The statute specifically requires the Board to prescribe a form and set a processing fee. The proposed regulations would implement BPC section 901(b) by incorporating by reference proposed Form 901-B (BCE/2013) to be submitted by the out-of-state practitioner to the Board to request authorization to participate in a sponsored event. The form requires the applicant to

submit include all information required by the statute as well as other information required by the Board to determine eligibility. Form 901-B (BCE/2013) 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.

The Board has determined that a \$59 processing fee is sufficient to cover the cost of processing the request for the health care practitioner. Additionally, Form 901-B (BCE/2013) requires the application to submit additional material not specifically listed in the statute. First the applicant must submit personal identifying information including contact information, social security number, employer's contact information and either a full set of fingerprints with the fee or a live scan inquiry. These requirements are reasonably necessary in order for the Board to verify that an applicant is "in good standing" as required by BPC section 901, including the requirement of section 901(b)(1)(B)(i) that the applicant has "not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under [Code] section 480." Section 480 and Title 16, California Code of Regulations section 317 authorize the Board to deny licensure based on an applicant's conviction of a substantially-related crime or the commission of an act substantially-related to the qualifications, functions or duties of a licensed doctor of chiropractic. A criminal background check cannot be effectuated if the Board does not have the appropriate personal identifying information. Further, the Board is authorized to require applicants to furnish fingerprints for criminal background checks under Title 16, California Code of Regulations section 321.1 and to receive criminal history information from the Department of Justice on applicants pursuant to Penal Code section 11105(b)(10). In addition, the Board is authorized to require disclosure of Social Security Numbers for all other applicants under Section 30 of the Business and Professions Code. Lastly, Section 901(b)(1)(B)(iii) requires a health-care practitioner to agree to comply with all applicable practice requirements set forth in BPC section 901 and the Board's applicable regulations. This form, with its accompanying attestation provisions, would provide the mechanism to effectuate such an agreement.

Section 901(b) also provides that applicants seeking authorization to participate must meet the education and experience requirements determined by the Board. The Board has determined that the applicant must possess a current, valid license to engage in the practice of chiropractic issued by a state, district or territory of the United States and have graduated from a chiropractic college approved by the Board. The Board believes that these minimum requirements are necessary to protect the public from inexperienced or unqualified practitioners who have not met the board's full requirements for licensure.

Section 309.2(b) – Response to Request for Authorization to Participate:

This proposed subsection sets forth the standard timeframe in which the Board will grant or deny a request for authorization to participate in a sponsored free health care event.

Factual Basis/Rationale:

BPC section 901(b)(1)(A) provides that the board shall notify the sponsoring entity within 20 days of receiving a request for authorization to participate whether that request is approved or denied. The proposed regulation sets forth this statutory requirement and is necessary in order to restate the standard timeframe for response by the board within the context of the regulations.

Adopt section 309.2(c) (Denial of Request to Participate)

This section would set forth the criteria under which the board may deny a request for authorization to participate in a sponsored free health care event.

Factual Basis/Rationale:

BPC section 901 provides that the board must authorize the participation of out-of-state practitioners in sponsored events, but it does not list specific criteria for denial of authorization other than if a practitioner “fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.” Therefore, it is necessary to provide specific detailed criteria the Board will use beyond the general authorization to deny an application.

The Board has determined that the failure of an applicant to respond to a request for additional information within seven days will result in an automatic denial of a request. Because the Board only has 20 days in which to grant or deny a request, timing is critical, as failure of an applicant to respond within seven calendar days will sufficiently jeopardize the Board’s ability to effectively review a completed application within the allotted time.

Further, failure to meet any of the specified requirements determined by the Board and discussed under section 309.2(a) of these proposed regulations will constitute an automatic denial of the application. These criteria are necessary to protect the public from inexperienced or unqualified practitioners who have not met the board’s full requirements for licensure.

The proposed regulation also sets forth discretionary reasons for denying a request. The first of these reasons is when applications are not received within 20 days prior to the event. Section 901(B)(1)(A) provides that the board shall use reasonable efforts to notify the sponsoring entity within this time. The proposed regulation provides needed clarity to the statute that, in the event that the statutorily required reasonable efforts are insufficient to review the application in advance of the event, the board may deny the request. It would be contrary to the board’s consumer protection mission to require it to grant authorization to an individual whose request is submitted in such a short timeframe prior to the scheduled event that it cannot adequately be reviewed.

The other discretionary reasons for denial are based upon the past actions of the Board with respect to that particular individual. The Board believes that an applicant's previous denial of a request or termination of an authorization may be sufficient cause for a subsequent denial. Because the time for review of the authorization is only 20 days, the Board may not have time to revisit the case of an individual who has already been determined by the Board as unfit to participate. The Board feels that it is reasonable to consider this a discretionary decision that may be used on a case-by-case basis to re-evaluate a particular individual's circumstances as appropriate, if sufficient time exists to do so without compromising public protection. It would be against the public interest to permit an applicant to practice, even temporarily for a limited purpose, in this State without a license for more than 3 sponsored events per year (maximum of 30 calendar days per year). As a result, the proposed regulation would specify that grounds for denial of authorization to practice for an out-of-state practitioner would include that the applicant had participated in three sponsored events during the 12-month period immediately preceding the current application.

Adopt section 309.2(d) (Appeal of Denial)

This section provides an appeal procedure for an applicant who has had a request for authorization to participate denied by the Board.

Factual Basis/Rationale:

Section 901 allows for the denial of a request for authorization to participate, but it does not provide any appeal procedure for the denied individual. In order to provide adequate due process, the Board believes that applicants should have access to the same appeal procedure available for an out-of-state practitioner who has had his or her authorization terminated. Therefore, the proposed regulation references the appeal procedure in section 309.3 of these proposed regulations, discussed below. This will provide consistency between the two appeal processes.

Adopt section 309.3(a) (Grounds for Termination of Authorization)

This subsection provides the grounds upon which the board may terminate the authorization to participate in a sponsored free health care event previously granted to an out-of-state practitioner.

Factual Basis/Rationale:

The first two grounds for termination listed in the proposed regulation are consistent with Section 901(j)(1), but are also necessary to provide guidance to the regulated practitioner that failure to comply with the Board's requirements for commission of an act that would constitute grounds for discipline against a California licensee would similarly be grounds for disciplining the out-of-state practitioner. As an additional ground for termination, this proposed regulation adds the receipt of a credible complaint indicating that a practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services. This provision is necessary in order for the Board to act consistently with protection of the public as its highest priority. Because of the permissive and temporary nature of the licensure exemption granted

under BPC section 901 and the limited time which the Board has to review and verify the qualifications of the out-of-state practitioner, it is essential for the Board to have the ability to act immediately to terminate the authorization to participate when a credible complaint of endangerment is received.

Adopt section 309.3(b) (Notice of Termination)

This subsection would specify that written notice of a 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 the sponsored free health care event, then this proposal would permit the Board to provide notice to any sponsored event representative on the premises.

Factual Basis/Rationale:

The statute provides that written notice of a termination shall be given to both the sponsoring entity as well as the individual practitioner. This proposed regulation is necessary to clarify that in the event a termination is issued during the course of a sponsored event, the board may provide the written termination notice to any representative of the sponsoring entity on the premises of the event. This provision is necessary because it is the most effective way to notify the entity in a manner that protects the public at the event itself and ensure that the practitioner is instructed to cease practice immediately. Further, satisfaction of the Board's notice obligations through service upon any representative of the event would ensure swift notification to the sponsoring entity if service on a specific contact person were required.

Adopt section 309.3(c) (Consequences of Termination)

This subsection sets forth the consequences of a termination of an authorization to participate and how the board will report the fact of the termination.

Factual Basis/Rationale:

BPC Section 901(j)(3) provides that out-of-state practitioners shall not provide services under this statute following a termination of authorization. The proposed regulation specifies that the practitioner shall "immediately" cease their participation in the event. The board believes that this clarification is necessary in the event that a termination is issued during the course of a sponsored health care event. In case there is any confusion as to when the termination becomes effective, this proposed provision would be necessary to remove any doubt that the practitioner must immediately desist from participation as soon as the termination notice is received.

The proposed regulation also provides that the Board will consider a termination of authorization as a disciplinary measure that is reportable to the national practitioner data banks and the individual's out-of-state licensing authorities. These provisions are reasonably necessary for public protection. The grounds for termination are those that the Board would consider as disciplinary measures of its own licensees (BPC sections 475, 480 and violations of the Act and Title 16, California Code of Regulations section 317). Because the Board does not have licensing authority over the out-of-state practitioner, its only disciplinary remedy is to report the conduct to the individual's home jurisdiction and applicable national practitioner data banks. If the conduct is such that it

would lead to action against the practitioner's out-of-state license, then the Board would have that information available to it in the event that the individual applied for either a subsequent authorization to participate in a future sponsored event or a license to practice in California.

Adopt section 309.3(d) (Appeal of Termination)

This subsection provides the procedure for appealing denials of authorization and terminations of authorizations to participate in sponsored free health care events.

Factual Basis/Rationale:

The statute allows for an out-of-state practitioner who has had his or her authorization to participate terminated by the board to file a written appeal to the board within 30 days of receipt of the termination notice. The proposed regulation specifies that this request for appeal shall be considered a request for an informal hearing under the Administrative Procedure Act (APA) at Government Code sections 11445.10 and following. This informal appeal process is potentially less costly than the formal hearing procedure and is warranted for removal or denial of this type of authorization. Formal APA appeals can take an average of one year or more, based upon the complexity of the case, to prosecute from the time an appeal is requested. The Board does not anticipate that the issues for a potential appeal of a denial or termination would be complex (whether requirements of the application had been met or compliance maintained), and there would be a greater need to have such appeals resolved in a fairly short time frame given the needs of the sponsoring entity. As a result, the Board believes that affording appellants with this informal process provides a simpler and more expeditious alternative to address their appeals while satisfying due process concerns.

Adopt section 309.3(e) (Informal Conference Option)

This subsection provides an alternative to a hearing under the APA for appeals submitted by out-of-state practitioners.

Factual Basis/Rationale:

BPC Section 901(j) allows for the filing of an appeal by an out-of-state practitioner. In addition to the APA procedure set forth in proposed section 309.3(d) above, this proposed regulation also offers the appealing out-of-state practitioner the option of an informal conference with the Board's Executive Officer to try and resolve the appeal. This proposed regulation is consistent with the board's practice for its own licensees who have been issued a citation (BPC sections 125.9, 148 and Cal. Code of Regs., Title 16, section 390.4) and provides an inexpensive option to ensure the efficient resolution of appeals when possible.

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

This proposal would specify that out-of-state practitioners authorized to participate in sponsored free health care events must post a notice containing the information prescribed in this proposed section in a place which is visible to patients or prospective patients at every station in which patients will be seen. The notice would inform patients

that the practitioner is licensed outside of California and given authorization by the Board to provide chiropractic services at that specific health fair. The notice also provides contact information for the California Board of Chiropractic Examiners.

**Factual Basis/Rationale:**

Statutory law makes no provision for notifying the affected public that out-of-state practitioners are not California licensed doctors of chiropractic in good standing. Without this notice requirement, the public would assume that participating doctors of chiropractic are licensees of the California Board of Chiropractic Examiners. This requirement also provides transparency to the public that participating doctors of chiropractic at the event hold a valid license from another state and are authorized to provide services only at that specific health care event. This proposal is necessary to provide the public protection through disclosure of participants' qualifications and practice limitations pursuant to BPC section 901 as well as the contact information for the authorizing regulatory board in the event that the public has concerns.

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 in the proposed regulations. It would be cumbersome, unduly expensive and otherwise impractical to publish the documents in the California Code of Regulations. These forms will be available on the Board's web site and may also be mailed upon request.

**Underlying Data**

- Assembly Bill 2699 (Chapter 270, Statutes of 2010)
- Assembly Bill 512 (Chapter 111, Statutes of 2013)
- Title 20 USC Section 7801
- Oct. 29, 2013 Board of Chiropractic Examiners Meeting Minutes [\(Draft\)](#)
- Registration of Sponsoring Entity Under Business & 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)
- Board of Chiropractic Examiners Resolution: Delegation to Department of Consumer Affairs for the Review and Registration of Sponsoring Entities
- Office of Administrative Law Decision of Disapproval of Regulatory Action In Re: Medical Board of California Proposed Regulations to Adopt Cal. Code of Regs., Title 16, Sections 1333, 1333.1, 1333.2, and 1333.3
- Table A: Data Supporting Application Fee for Out-of-State Practitioner Authorization to Participate in a Sponsored Free Health Care Event

**Economic Impact Assessment:**

**Impact on Jobs:**

The Board has determined that this regulatory proposal would not affect the creation or elimination of jobs within the State of California. This proposal would specifically

authorize out of state health care practitioners to volunteer their services at sponsored free health care events in order to provide health care to uninsured or underinsured individuals in California.

- **Implementation Costs for Sponsoring Entities:**

Sponsoring entities may incur nominal expenses associated with submission of the registration form to DCA, and complying with recordkeeping and reporting requirements. Sponsoring entities shall be responsible for submitting the "Registration of Sponsoring Entity Under Business and Professions Code Section 901", Form 901-A (DCA/2011), to DCA. Expenses associated with submission of this form include printing and mailing, which 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, as well as the copy of the authorization for participation issued by the Board to an out-of-state practitioner at a physical location in California. The records must be maintained for a period of at least five years after the date the sponsored event concluded; the records may be kept in electronic or paper form. The sponsoring entity shall also 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 are nominal and include storage and transportation of the required records. These expenses are minimal and should not have a significant fiscal impact upon sponsoring entities. Finally, the sponsoring entity shall be responsible for providing a report to the Board summarizing the details of the sponsored event within fifteen days after the conclusion of the event. The report may be provided to the Board on a form of the sponsoring entity's choosing. Expenses associated with these reporting requirements are nominal and include printing and postage, which is minimal and should not have a significant fiscal impact upon sponsoring entities.

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

It is unknown how many applications will be received from sponsors of free health care events and out-of-state practitioner volunteers. Since the enactment of BPC section 901, the Board has not received any inquiries from out-of-state doctors of chiropractic regarding participation in such events. The statute includes doctors of chiropractic as practitioners who are able to participate in these events; therefore, the Board anticipates approximately 5 applications from out-of-state practitioners seeking approval to participate during the first year of implementation of this proposal. A cost analysis of tasks associated with processing a request for authorization from an out-of-state practitioner was conducted in order to determine the application cost and is illustrated in Table A: Data Supporting Application Fee for Out-of-State Practitioner Authorization to Participate in Sponsored Event. Out-of-state doctors of chiropractic seeking authorization from the Board to participate in a sponsored free health care event would incur a \$59 fee for application processing. Additionally, applicants would incur costs associated with furnishing fingerprints for the purpose of allowing the Board to conduct 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. The fingerprint requirement only applies to the first application submitted by the applicant to the Board. These fees may be covered by sponsoring entities, who will also incur minor costs associated with maintaining records for their volunteers, reporting to the Board after events and filing a request for registration. These costs are necessary to cover the costs associated with staff time and resources to process applications for registration of sponsored events and volunteer out-of-state practitioners to ensure applicants are qualified to provide these services to the public within a strict timeframe specified in BPC Section 901.

**Benefits of the Proposed Regulation:**

The Board’s highest priority is protection of the public when exercising its licensing, regulatory and disciplinary functions. This proposal is consistent with the Board’s public protection priority. This proposal will enable chiropractic services to be provided at sponsored free health care events to uninsured or under-insured Californians who would otherwise not have the ability to obtain health care. Lack of health care can have an overall adverse impact upon individuals. These regulations will promote health care access in California in addition to providing public protection through the Board’s registration of out-of-state doctors of chiropractic.

Additionally, this proposal complies with the provisions of Business and Professions Code Section 901, as it pertains to out-of-state licensed doctors of chiropractic, including the application and registration requirements, disciplinary actions, recordkeeping requirements and provisions for denial of an out-of-state doctor of chiropractic applicant and termination of their registration authorization. The Board’s proposed regulations are intended to implement BPC section 901 in a manner that will provide the greatest protection to the people of California.

**Worker Safety:**

This regulatory proposal would not affect worker safety because it creates a process for registering sponsoring entities and authorizing out-of-state health care practitioners who wish to participate in sponsored free health care events in California.

**Environment:**

This proposal would not affect the state’s environment because it creates a process for registering sponsoring entities and authorizing out-of-state health care practitioners who wish to participate in sponsored free health care events in California.

**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 than the proposed regulation. 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.

**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.