

## 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 at a hearing to be held at 2525 Natomas Park Drive, Suite 120 in Sacramento, CA 95833 at 10:30 a.m., on Tuesday, March 13, 2012. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests, but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. Written 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 Monday, March 12, 2012.

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), 1000-4(e) and 1000-10 of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii) and to implement, interpret or make specific Sections 1000-4(b), and 1000-10(b) of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii); the Board is considering changes to Title 16, Division 4, of the California Code of Regulations as follows:

### INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Section 1000 – 4(b) of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p.1xxxviii) 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.

This proposal would make regulatory changes to establish safety standards for the use of lasers by licensed chiropractors and any person under their direct or indirect supervision. These changes would increase the Board's enforcement authority over the use of lasers within the scope of chiropractic by defining a violation of this section as unprofessional conduct.

There are currently no state regulations governing the use of lasers by chiropractors; therefore, this proposal is not inconsistent or incompatible with existing state regulations.

The Board is proposing to make the following changes:

1. Add Section 302.5(a)(1)

This proposal would prohibit a duly licensed chiropractor and any person under their direct or indirect supervision from using any laser in the practice of chiropractic which has not been properly approved or cleared by the United States Department of Food and Drug Administration.

2. Add Section 302.5(a)(2)

This subparagraph would prohibit a duly licensed chiropractor and any person under their direct or indirect supervision from marketing or advertising the use of a laser or using a laser for purposes other than treatment consistent with section 302 and the product's FDA approval or clearance.

3. Add Section 302.5(a)(3)

This subparagraph would require a duly licensed chiropractor and any person under their direct or indirect supervision to follow the manufacturer's specified guidelines for the safe use of laser.

4. Add Section 302.5(a)(4)

This subparagraph would require a duly licensed chiropractor and any person under their direct or indirect supervision to comply with all state and federal laws governing the use of lasers in clinical settings.

5. Add Section 302.5(b)

This section would assert that nothing in this section shall be construed to authorize the use of a laser by a chiropractor outside of the chiropractic scope of practice including, but not limited to, laser ablation or surgical procedures, and laser treatment of allergies in cases where there is a known risk of anaphylactic reaction to the individual being treated.

6. Add Section 302.5(c)

This section would define a violation of this section as unprofessional conduct which may subject the licensee to discipline by the Board.

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 through 17630 Requires Reimbursement: None

Business Impact:

The Board initially determined that the proposed regulation would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

There are no costs associated with the proposed regulatory action. This proposal only affects chiropractors who offer laser services in their practice.

Impact on Jobs/New Businesses:

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

This proposal will only affect chiropractic licensees who choose to use lasers in their chiropractic practice for treatments within the scope of chiropractic and would not impose any additional costs to the licensee to comply with this provision.

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None

#### ECONOMIC IMPACT ANALYSIS:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation does not impose a new requirement on chiropractic licensees; rather, it would adopt safety standards for the safe use of lasers in chiropractic. Not all chiropractors choose to use lasers in their practice; therefore, this proposal would only affect licensees who choose to use lasers for chiropractic treatments.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, that it will not create or eliminate jobs or occupations, and the proposal will not affect the ability of California businesses to

compete with other states by making it more costly to produce goods or services. The board's proposal does not impact multiple industries. The specific benefits anticipated by this proposal include greater protection of public health and safety, as well as improved worker safety and the state's environment by setting standards for the advertising and safe use of laser devices within the practice of chiropractic.

Small Businesses: The Board's proposal may affect small businesses; however, the board does not have nor does it maintain data to determine how many chiropractors utilize lasers in their practice. The Board has determined that this regulatory proposal will not impose a significant cost to small businesses.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of new or elimination of existing jobs, businesses or the expansion of businesses in the State of California.

Occupations/Businesses Impacted: This proposal would impact only those chiropractic licensees who choose to use laser devices in their practice for which the overall cost for compliance would be minimal to non-existent. The proposal would provide greater protection to the public and workers who administer laser treatments in chiropractic by establishing safety standards for laser devices used in chiropractic.

Reporting Requirements:

None

Comparable Federal Regulations: None

Benefit(s) of Proposed Regulation:

Section 1000 – 4(b) of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p.1xxxviii) 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. Further, BPC section 1000-10(a) of the Chiropractic Initiative Act authorizes the Board to adopt, amend or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of professional service and the protection of the public. The specific benefits anticipated by this proposal include greater protection of public health and safety, as well as improved worker safety by setting standards for the advertising and safe use of laser devices within the practice of chiropractic.

The Board does not anticipate that this proposed regulation will impact the prevention of discrimination, the promotion of fairness or social equity, or an increase in openness and transparency in business and government.

## CONSIDERATION OF ALTERNATIVES

A rulemaking agency must determine in the Final Statement of Reasons that no reasonable alternative considered by the agency or that has otherwise been identified and brought to

the attention of the agency 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 or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

#### CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Dixie Van Allen, Program Analyst  
Address: 2525 Natomas Park Drive, Suite 260  
Sacramento, California 95833  
Telephone: (916) 263-5329  
Fax: (916) 263-5369  
E-mail: [dixie.vanallen@CHIRO.ca.gov](mailto:dixie.vanallen@CHIRO.ca.gov)

The backup contact person is:

Name: Robert Puleo, Executive Officer  
Address: 2525 Natomas Park Drive, Suite 260  
Sacramento, CA 95833  
Telephone: (916) 263-5355  
Fax: (916) 263-5369  
E-mail: [chiro.info@chiro.ca.gov](mailto:chiro.info@chiro.ca.gov)

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

#### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Dixie Van Allen at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at

least 15 days before the Board adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Dixie Van Allen at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Dixie Van Allen at the above address, or by accessing the Board's website at [http://www.chiro.ca.gov/business\\_rulemaking.htm](http://www.chiro.ca.gov/business_rulemaking.htm).