

# **TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS**

## **DEPARTMENT OF CONSUMER AFFAIRS (DCA)**

### **INITIAL STATEMENT OF REASONS**

**Hearing Date:** No hearing has been scheduled for the proposed action.

**Subject Matter of Proposed Regulations:** Repeal of Mental Illness Regulation

**Section Affected:** Repeal section 315 of Division 4 of Title 16 of the California Code of Regulations (CCR)<sup>1</sup>

#### **Background and Statement of the Problem:**

The Board of Chiropractic Examiners (Board) regulates the practice of chiropractic in California, including approximately 12,000 licensed doctors of chiropractic, 106 providers of chiropractic continuing education, and 20 chiropractic programs located throughout the United States and Canada. The Board was created on December 21, 1922, through the Chiropractic Initiative Act of California (Act), as the result of an initiative measure approved by California voters on November 7, 1922.

Protection of the public is the Board's highest priority when exercising its licensing, regulatory, and enforcement functions, and the Board's vision is ensuring California consumers receive high-quality, patient-centered and collaborative care. The primary methods by which the Board achieves this objective are: establishing minimum standards for chiropractic programs, licensure and practice, and continuing education; issuing licenses to eligible applicants; investigating complaints against licensees and disciplining them for violating provisions of the Act, the Board's regulations, and other laws that govern the practice of chiropractic; and monitoring licensees who have been placed on probation.

The Act, section 4(b), authorizes the Board to adopt regulations as it deems proper and necessary for the performance of its work, the effective enforcement and administration of the Act, the establishment of educational requirements for license renewal, and the protection of the public. The Act, section 4(e), authorizes the Board to do any and all things necessary or incidental to the exercise of its powers and duties.

The Act, section 10(a), authorizes the Board to, by rule or regulation, 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.

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<sup>1</sup> Unless otherwise noted, all references to the CCR hereafter are to Title 16.

CCR section 315, titled “Mental Illness”, was last amended by the Board on August 19, 1977, and allows the Board to order a licensee to be examined by one or more physicians specializing in psychiatry when reasonable cause exists that the licensee is mentally ill to the extent that it may affect their ability to conduct with safety to the public the practice of chiropractic. The regulation also allows the Board to place a licensee on probation, suspend their right to practice for a period not exceeding one year, revoke their license, or take other such action as the Board in its discretion deems proper if the licensee is found to be mentally ill, and specifies terms and conditions that may be imposed by the Board when reinstating a license after receiving competent evidence of the absence or control of the condition which originally caused the Board to take action against the licensee.

However, this regulation is unnecessary because it duplicates existing statutory authority specified in Business and Professions Code (BPC) sections 820 through 828 that allows DCA healing arts boards, including the Board, to order a licensee to be examined whenever it appears they may be unable to practice their profession safely due to mental illness, or physical illness affecting competency, and to take appropriate action against a licensee for failure to comply with the order, or upon determining that they are unable to practice safely because they are mentally ill, or physically ill affecting competency, or when reinstating a license after receiving competent evidence of the absence or control of the condition which caused the revocation or suspension of the license.

To eliminate this redundancy, the Board has drafted a proposal to repeal CCR section 315 in its entirety. This proposal also supports the Board’s 2022–2026 Strategic Plan Objective 4.2 to perform a comprehensive review of existing regulations to identify and address any unnecessary or obsolete regulations and to clarify current regulations.

At the October 24, 2024 meeting, the Board approved proposed text repealing CCR section 315, directed staff to commence the formal rulemaking process, and authorized the Executive Officer to make any non-substantive or technical changes to the package.

**Anticipated benefits from this regulatory action:**

This proposal benefits the health and welfare of California residents by removing an obsolete and unused provision that duplicates existing statutory authority, while still allowing the Board to discipline licensees and protect consumers. This action will reduce confusion for both licensed doctors of chiropractic and the public, clarify the Board’s current regulations, and eliminate time spent navigating unnecessary regulations.

**Specific purpose of, and rationale for, each adoption, amendment, or repeal:**

- Repeal Section 315. Mental Illness.

Purpose: This regulatory proposal will repeal CCR section 315 in its entirety.

Rationale: It is necessary to repeal this regulation because it is duplicative of existing law, BPC sections 820 through 828, which already provides statutory authority to the DCA healing arts boards, including the Board, to order a licensee to be examined by one or more physicians and surgeons or psychologists designated by the licensing agency whenever it appears that the licensee may be unable to practice their profession safely because their ability to practice is impaired due to mental illness or physical illness affecting competency, and to take appropriate disciplinary action against a licensee for failure to comply with the order for an examination or upon determining they are unable to practice safely.

Specifically, CCR section 315, subdivision (a), relating to administrative adjudication, duplicates BPC section 826, which specifies that the proceedings regarding a licensee's mental illness, or physical illness affecting competency, shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CCR section 315, subdivision (b), relating to a psychiatric examination for a licensee's suspected mental illness, is substantially the same as the authority for the Board to order an examination under BPC section 820 for a licensee's suspected mental illness, or physical illness affecting competency. The minor difference between these two provisions is that the regulation allows the Board to order an examination "*when reasonable cause exists* that a person holding a license under this Act is mentally ill to the extent that it may affect his ability to conduct with safety to the public the practice authorized by such license," whereas the statute authorizes the Board to order an examination "*whenever it appears* that any person holding a license, certificate, or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licensee's ability to practice is impaired due to mental illness, or physical illness affecting competency" (emphasis added). This distinction between the regulatory and statutory language is inconsequential and does not result in any substantive difference in application, so there is no justification for maintaining this duplicative and overlapping provision within the Board's regulations.

CCR section 315, subdivision (c), relating to Board action in the event of mental illness and limitations on reinstatement, duplicates BPC section 822, which outlines the actions the Board can take after determining a licensee's ability to practice safely is impaired because they are mentally ill, or physically ill affecting competency, and prohibits the Board from reinstating a license until it has received competent evidence of the absence or control of the condition that caused the revocation or suspension of the license and is

satisfied that with due regard for the public health and safety the license may be safely reinstated.

CCR section 315, subdivision (d), relating to conditions of reinstatement, duplicates BPC section 823, which specifies the Board's authority to impose terms and conditions to be complied with when reinstating a license after the absence or control of the condition that caused the revocation or suspension of the license.

### **Underlying Data**

Technical, theoretical, or empirical studies, reports, or documents relied upon:

- Board of Chiropractic Examiners' October 24, 2024 Board Meeting Agenda, Materials, and Minutes – Agenda Item 16C

### **Business Impact:**

The Board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

This proposal simply repeals an obsolete and unused provision of the Board's regulations that unnecessarily duplicates existing statutory authority that authorizes the Board to order a licensee to be examined when it appears they may be unable to practice safely due to mental illness.

The repeal of this regulation is not anticipated to result in additional costs to licensees or businesses or to have any adverse impact on businesses, including those owned or operated by licensees.

### **Economic Impact Assessment:**

The Board has determined that this regulatory proposal will have the following effects:

- It will not create jobs or eliminate jobs within the State of California because the proposal only repeals an obsolete and unused regulation that unnecessarily duplicates existing statutory authority.
- It will not create new business or eliminate existing businesses within the State of California because the proposal only repeals an obsolete and unused regulation that unnecessarily duplicates existing statutory authority.

- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only repeals an obsolete and unused regulation that unnecessarily duplicates existing statutory authority.
- This regulatory proposal benefits the health and welfare of California residents by removing an obsolete and unused regulation that duplicates existing statutory authority thereby reducing confusion and eliminating time spent navigating unnecessary regulations.
- This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.
- This regulatory proposal does not affect the state's environment because it has nothing to do with the environment.

**Specific Technologies or Equipment:**

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

**Consideration of Alternatives:**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

**Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:**

No such alternatives have been proposed, however, the Board welcomes comments from the public.