

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

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

Subject Matter of Proposed Regulations: Appeal Process for Contested Citations and Licensee Compliance with Assessed Fines

Section Affected: Amend sections 390.4 and 390.5 of Division 4 of Title 16 of the California Code of Regulations (CCR)¹

Background and Statement of the Problem:

The Board of Chiropractic Examiners (Board) regulates the practice of chiropractic in California, including approximately 12,500 licensed doctors of chiropractic, 141 providers of chiropractic continuing education, and 20 chiropractic colleges 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 colleges, licensure and practice, and continuing education programs; 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.

¹ Unless otherwise noted, all references to the CCR hereafter are to Title 16.

Existing law, Business and Professions Code (BPC) section 125.9, authorizes the Board to establish, by regulation, a system for the issuance of a citation to a licensee which may contain an order of abatement or an order to pay an administrative fine where the licensee is in violation of the Act or any regulation adopted by the Board. BPC section 148 authorizes the Board to also establish, by regulation, a similar system for the issuance of a citation to an unlicensed person who is acting in the capacity of a licensee under the Board's jurisdiction.

The Board adopted its citation system effective September 25, 2000, through CCR sections 390 through 390.6. However, this citation system did not contain the following statutorily required provisions:

- If a hearing is not requested, payment of any fine shall not constitute an admission of the violation charged. (BPC § 125.9, subd. (b)(4).)
- Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine. (BPC § 125.9, subd. (b)(5).)

In 2020, the Legislature passed Senate Bill (SB) 1474 (Committee on Business, Professions and Economic Development, Chapter 312, Statutes of 2020), which amended BPC section 125.9, subdivision (b)(5), to also make a licensee's failure to comply with an order of abatement within 30 days of the date of the order a cause for disciplinary action by the board.

The Board has drafted a proposal amending CCR sections 390.4 and 390.5 to make conforming changes to the Board's system for issuing citations to ensure it contains each of the required provisions found within BPC section 125.9, subdivision (b), and to extend the deadline for requesting an informal conference to contest a citation to 30 days from the date of issuance on the citation for consistency with the timeframe for requesting a formal administrative hearing.

At the April 17, 2025 meeting, the Board approved text amending CCR sections 390.4 and 390.5, 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 strengthening the Board's ability to enforce consumer protection through helping ensure the Board can effectively address a licensee's failure to pay a citation fine during the license renewal process and, when warranted, take disciplinary action against a licensee for

noncompliance with a citation fine or order of abatement. This proposal also benefits individuals who have been issued citations by the Board, and their legal counsel or authorized representatives, by providing the same deadline for a cited person to exercise their right to appeal the citation to an informal conference, a formal hearing, or both.

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

1. Amend Section 390.4. Contested Citations.

- Amend subsection (a) to clarify that payment of a fine does not constitute an admission of the violation and make other technical, non-substantive changes.

Purpose: A sentence is being added to this subsection indicating that if a hearing is not requested, the Board shall not construe the payment of any fine to constitute an admission of a charged violation.

In addition, the word “licensee” is being deleted and replaced with the term “cited person”, the term “he/she” is being deleted and replaced with the word “they”, the word “desires” is being changed to “desire”, the word “Board” is being capitalized, and the word “of” is being deleted and replaced with “on”.

Rationale: It is necessary to amend this text to ensure the Board's citation system conforms with BPC section 125.9, subdivision (b)(4), which requires the system to contain a provision indicating that if a hearing is not requested, payment of any fine does not constitute an admission of the violation charged, and BPC section 148, which requires a system for the issuance of a citation to an unlicensed person to meet the requirements of BPC section 125.9.

In addition, technical edits are being made to this subsection to incorporate gender neutral language in the regulation, to reflect that any cited person may request a hearing, not just a licensee, to capitalize “Board”, and to indicate that the date of issuance is listed on the citation.

- Change the deadline for a cited person to request an informal conference in subsection (b).

Purpose: The deadline for a cited person to request an informal conference with the Executive Officer is being changed from 14 calendar days after service of the citation to 30 calendar days of the date of issuance on the citation.

Rationale: BPC section 125.9, subdivision (b)(4), establishes a deadline of 30 days of the date of issuance of a citation for a cited person to request an administrative hearing to contest the citation. The Board is setting the same deadline for a cited person to request an informal conference with the Executive Officer for consistency in the

deadlines for a cited person to exercise their rights to appeal the citation to an informal conference, an administrative hearing, or both.

- Make technical, non-substantive changes to subsections (c), (d), and (e).

Purpose: The term “his/her” is being deleted and replaced with the word “their” or the term “the cited person’s” where it appears in subsections (c), (d), and (e). The term “and/or” is being deleted and replaced with the word “or” in subsection (c). The term “if any” is being added after “the cited person’s legal counsel or authorized representative” in subsection (c), and the term “or authorized representative” is being added after the term “legal counsel” in subsection (d).

Rationale: These technical, non-substantive edits are being made to incorporate gender neutral language in the regulation and for consistency in the use of the term “legal counsel or authorized representative, if any” in subsections (c) and (d).

- Amend Note.

Purpose: The Note is being amended to add authority to adopt the regulation pursuant to BPC section 148 and the Act, section 4(e), to remove authority under the Act, section 10, to add references to BPC sections 125.9 and 148, to remove references to the Act, sections 4(b) and 10, and to correct the page number of the Act in the authority section.

Rationale: These are technical, non-substantive corrections to the authority and reference sections that have no effect on the regulation.

2. Amend Section 390.5. Compliance with Citation/Order of Abatement.

- Delete “his/her” and replace with “their” in subsection (a).

Purpose: The term “his/her” is being deleted and replaced with the word “their” where it appears in subsection (a).

Rationale: This technical, non-substantive edit is being made to incorporate gender neutral language in the regulation.

- Amend subsection (b) and delete subsection (c) regarding consequences for failure to comply with a citation fine or order of abatement.

Purpose: The prior text of subsections (b) and (c) is being replaced with new text stating that the failure of a licensee to pay a fine or comply with an order of abatement, or both, within 30 calendar days of the assessment or order, unless the citation is being appealed, shall constitute unprofessional conduct and cause for the Board taking disciplinary action against the licensee. In addition, an unpaid fine shall be added to the fee for renewal of a license and the Board will not renew the license without the licensee’s payment of the renewal fee and fine.

Rationale: It is necessary to amend this text to ensure the Board's citation system conforms with BPC section 125.9, subdivision (b)(5), which provides that a licensee's failure to pay a fine or comply with an order of abatement, or both, within 30 days, unless the citation is being appealed, may result in disciplinary action, and that a license shall not be renewed without payment of the renewal fee and fine.

- Amend Note.

Purpose: The Note is being amended to add authority to adopt the regulation pursuant to BPC section 148 and the Act, section 4(e), to add references to BPC sections 125.9 and 148, to remove a reference to the Act, section 4(b), and to correct the page number of the Act in the authority and reference sections.

Rationale: These are technical, non-substantive corrections to the authority and reference sections that have no effect on the regulation.

Underlying Data

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

- Senate Bill 1474 (Committee on Business, Professions and Economic Development, Chapter 312, Statutes of 2020)
- Board of Chiropractic Examiners' December 11, 2020 Board Meeting Agenda, Materials, and Minutes – Agenda Item 2
- Board of Chiropractic Examiners' September 18, 2023 Government and Public Affairs Committee Meeting Agenda, Materials, and Minutes – Agenda Item 4
- Board of Chiropractic Examiners' October 19, 2023 Board Meeting Agenda, Materials, and Minutes – Agenda Item 12B
- Board of Chiropractic Examiners' 2022–23 and 2023–24 Fiscal Year-End Reports of Unpaid Citation Fines
- Board of Chiropractic Examiners' February 13, 2025 Board Meeting Agenda, Materials, and Minutes – Agenda Item 11
- Board of Chiropractic Examiners' April 17, 2025 Board Meeting Agenda, Materials, and Minutes – Agenda Item 13

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:

The proposed regulatory action only updates the Board's citation system for conformance with the mandatory statutory provisions found in BPC section 125.9, subdivision (b), and to extend the deadline for appealing a citation to an informal conference. This proposed regulation action only impacts licensed doctors of chiropractic and unlicensed individuals acting in the capacity of a licensee who have been issued a citation by the Board for one or more violations of the laws and regulations governing the practice of chiropractic in California. The Board does not have authority to issue a citation to a business.

This proposal is not anticipated to result in any additional costs to licensees or to businesses owned by or employing licensees. However, one of the mandatory provisions for citation systems prohibits the Board from renewing a license until an outstanding fine has been paid to the Board. (BPC § 125.9, subd. (b)(5).) Of the Board's approximately 12,500 licensees, the Board estimates that up to five licensees per year may experience delays in renewing their license due to this requirement.

A business owned by or employing a licensee whose license renewal is delayed due to nonpayment of an outstanding citation fine to the Board may incur a significant fiscal impact during the period of time during which the license is invalid and the licensee is unable to legally practice chiropractic. However, any adverse impact may be avoided simply by complying with the laws and regulations governing the practice of chiropractic in California or by timely paying an assessed fine if a citation is issued. Therefore, the overall impact on businesses is insignificant.

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 updates the Board's citation system for conformance with the mandatory statutory provisions and to extend the deadline for appealing a citation to an informal conference. The proposed changes to these regulations will not affect the number of jobs within the state.
- It will not create new business or eliminate existing businesses within the State of California because the proposal only updates the Board's citation system for conformance with the mandatory statutory provisions and to extend the deadline for appealing a citation to an informal conference. The proposed changes to these regulations will not affect the number of businesses within the state.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only updates the Board's citation system for conformance with the mandatory statutory provisions and to extend the deadline for appealing a citation to an informal conference. The proposed

changes to these regulations will not impact the expansion of business within the state.

- This regulatory proposal benefits the health and welfare of California residents by ensuring the Board can effectively address a licensee's failure to pay a citation fine during the license renewal process and, when warranted, take disciplinary action against a licensee for noncompliance with a citation fine or order of abatement.
- 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.