

TITLE 16. BOARD OF PODIATRIC MEDICINE

NOTICE IS HEREBY GIVEN that the Board of Podiatric Medicine (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the State Capitol Building, Room 113, Sacramento, California, 95814, at 9:00 a.m., on June 1, 2007. Written comments must be received by the Board at its office not later than 5:00 p.m. on May 30, 2007, or must be received by the Board at the hearing. 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 2470 of the Business and Professions Code; and to implement, interpret or make specific Sections 2480 and 2488 of the Business and Professions Code, the Board is considering changes to Division 13.9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1399.678 - Waiver of Requirement.

Business and Professions Code Sections 2470 authorizes the board to adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act, regulations necessary to enable the board to carry into effect the provisions of law relating to the practice of podiatric medicine.

This amendment would remove the language that permits retired licensees restricted practice and conform to Business and Professions section 2439(b), (SB1077, chapter 607, Statutes of 2003), which says that a doctor of podiatric medicine may not practice with a retired license.

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.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate:

None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement:

None.

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

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

Cost Impact on Representative Private Person or Business:

The Board of Podiatric Medicine 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.

EFFECT ON SMALL BUSINESS

The Board of Podiatric Medicine has determined that the proposed regulations would not affect small businesses. This amendment eliminates the language in the regulation that permits retired licensees restricted practice and conforms to Business and Professions section 2439(b), amended in 2003, which **does not** allow retired licensees to practice.

CONSIDERATION OF ALTERNATIVES

The Board of Podiatric Medicine must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be 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 proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Podiatric Medicine at 1420 Howe Avenue, Suite 8, Sacramento, California 95825-3229.

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below **[or by accessing the website listed below]**.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kathleen Cook
 Address: 1420 Howe Avenue, Suite 8
 Sacramento, CA 95825-3229
 Telephone No.: 916-263-0315
 Fax No.: 916-263-2651
 E-Mail Address: Kathleen_Cook@dca.ca.gov

The backup contact person is:

Name: Jim Rathlesberger
 Address: 1420 Howe Avenue, Suite 8
 Sacramento, CA 95825-3229
 Telephone No.: 916-263-2650
 Fax No.: 916-263-2651
 E-Mail Address: Jim_Rathlesberger@dca.ca.gov

Website Access: Material regarding this proposal can be found at www.bpm.ca.gov.

BOARD OF PODIATRIC MEDICINE

Waiver of Requirement

SPECIFIC LANGUAGE

Amend section 1399.678 of Division 13.9 of Title 16 of the California Code of Regulations to read as follows:

1399.678. Waiver of Requirement.

(a) The board in its discretion may exempt permanently or temporarily from the requirements of this article, any licensee who for reasons of retirement, health, military service, or undue hardship cannot meet those requirements. Applications for waivers shall be submitted on a provided form to the board for its consideration.

(b) Any licensee so exempted by reason of retirement may not routinely engage in the practice of podiatric medicine, and his or her podiatric medical practice shall be restricted as follows:

- (1) ~~Any examining, treating and prescribing is limited to 20 patients annually.~~
- (2) ~~Prescribing only Schedule IV and V controlled substances unless otherwise authorized by the board to prescribe from other schedules; the licensee's Drug Enforcement Administration (DEA) certificate shall reflect those restrictions.~~
- (3) ~~Irrespective of age, any income derived from the practice of podiatric medicine shall not exceed the net annual income allowed for recipients of social security benefits.~~

c) Any licensee who submits an application for waiver which is denied by the board, may be ineligible for renewal of his or her license to practice podiatric medicine under the provisions of Section 1399.676.

(d) Any newly-licensed doctor of podiatric medicine who is licensed for less than six (6) months of the year shall be exempt from the continuing education requirement for that year.

(e) Any licensee granted a temporary waiver may not be granted another temporary waiver at the next license renewal.

BOARD OF PODIATRIC MEDICINE

INITIAL STATEMENT OF REASONS

Hearing Date: June 1, 2007.

Subject Matter of Proposed Regulation:

Waiver of Requirement. This regulation permits restricted practice with a retired license

Section(s) Affected: Title 16 of the California Code of Regulations

Amend Section 1399.678

Specific Purpose of each adoption, amendment, or repeal:

Amend Section 1399.678(b):

The specific purpose for which the Board of Podiatric Medicine is proposing an amendment to this regulation is to conform to Business and Professions Code section 2439(a). Section 2439(a) was amended to include Podiatric Medicine, SB 1077 (Figueroa, Aanestad, Brulte, and Machado, Chapter 607, Statutes of 2003). This amendment will remove the language in regulation 1399.678(b) that currently permits a Doctor of Podiatric Medicine to practice medicine with a retired license.

Factual Basis/Rationale

Business and Professions Code 2439 was amended in 2003, Chapter 607, and to state that the holder of a retired license may not engage in the practice of medicine or the practice of podiatric medicine. Amending this regulation will remove the language allowing the limited practice of podiatric medicine to **may not** practice podiatric medicine. Currently regulation 1399.678(b) allows the restricted practice of podiatric medicine and reads as follows:

1399.678(b) Any licensee so exempted by reason of retirement may not routinely engage in the practice of podiatric medicine and his or her podiatric medical practice shall be restricted as follows:

- (1) Any examining, treating and prescribing is limited to 20 patients annually.
- (2) Prescribing only Schedule IV and V controlled substances unless otherwise authorized by the board to prescribe from other schedules; the licensee's Drug Enforcement Administration (DEA) certificate shall reflect those restrictions.

Business and Professions Code reads as follows:

2439(a) Every licensee is exempt from the payment of the renewal fee and requirement for continuing medical education if the licensee has applied to the Division of Licensing for a retired license. The holder of a retired license may not engage in the practice of medicine or the practice of podiatric medicine. (b) If a physician and surgeon has applied to convert from retired status to active status on or after January 1, 2004, but

prior to January 1, 2005, the fee to change license status shall be waived, unless the change in status coincides with the physician and surgeon' s license renewal date. The board shall refund any fees paid by a physician and surgeon to change from retired to active status after January 1, 2004, and before January 1, 2005, unless the change in status coincides with the physician and surgeon's license renewal date.

Underlying Data

None

Business Impact

This regulation will not have a significant adverse economic impact on businesses.

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.