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Mischa Matsunami  
Board of Podiatric Medicine  
2005 Evergreen Street, Suite 1300  
Sacramento, CA 95815

re: Section 1399.730: Notice to Consumers by DPMs – Support and Amend

Dear Ms. Matsunami:

Consumers Union, the nonprofit publisher of *Consumer Reports*, is writing in support of the Board of Podiatric Medicine's (BPM) adoption of proposed section 1399.730, Title 16 of the California Code of Regulations. This proposal requires doctors of podiatric medicine (DPMs) to notify their patients that they are licensed by the State of California, and provides the Board's website address and the toll-free number where consumers with complaints may seek guidance. Consumers Union supports this regulation and, as described below, urges several modifications to maximize public awareness.

Effective in 1999, Section 138 of the California Business and Professions Code mandates that all licensees of the Department of Consumer Affairs provide notice to consumers that they are licensed by the State. While other boards have fallen in line with this mandated duty, BPM has not yet complied with the law. While a perceived conflict in statutory language between Business and Professions Code sections 138 and 680, both passed in 1988, has been cited as a reason for not proposing a regulation before now, these provisions have different goals. Section 680 requires that health professionals inform their patients of their name and the type of license they hold (such as "MD" or "RN"), whereas Section 138 requires that licensees inform patients that they are licensed *by the State*. Proposed section 1399.730 addresses the goal of Section 138. We note that the Medical Board of California (MBC) adopted a similar "notice to consumers" regulation in July 2009, and we are gratified that in proposing this regulation, the BPM recognizes the importance of improving public notice by this simple requirement.

The highest statutory responsibility of the BPM and the MBC is to protect the public. See Bus. & Prof. Code §§ 2460.1, 2001.1; see also Brian R. Sala, California Research Bureau, *Physician Misconduct and Public Disclosure Practices at the Medical Board of California* (2008), CRB-08-015 at 12 ["CRB Report"]. The BPM and the MBC implement this duty primarily by investigating complaints. See Bus. & Prof. Code § 2220(a). The CRB report cites former MBC President Dr. Richard Fantozzi as stating, "The Medical Board is complaint-driven; we do not show up at hospitals or physicians'

offices absent complaint information brought to our attention.” CRB Report at 13. Thus, patient awareness of the existence and disciplinary function of the BPM and the MBC is integral to the Board performing its public protection duties.

A 2006 national survey found low levels of public knowledge about state medical boards. See CRB Report at 4 and 14. The CRB also noted that the number of complaints to the MBC about adverse events falls far short of expected filings based on the leading empirical research estimating the rate at which adverse events in medical care occur. Its conclusion: the data imply “the Medical Board’s current strategies for uncovering and disciplining physicians responsible for negligent care are not adequate to inform the public about physician misconduct.” CRB Report at 26.

If patients do not know that the MBC licenses their medical doctors and how to contact that agency, then valid complaints will not be filed or may be filed too late for the MBC to take action. The same is true for DPMs. The public’s role in helping the BPM identify problems DPMs is essential; without patients’ knowledgeable participation, the BPM’s regulatory role is hindered, and public protection compromised. This is especially true in California since the regulatory approach is predicated primarily on reacting to complaints filed, as opposed to initiating inspections or investigations.

In order to carry out its duties, it is critical that BPM inform the public of its existence and be accessible to consumers in the event that assistance is needed. Proposed section 1399.730 targets patients at point of service. The notice requirement is not burdensome on DPMs, and it is mandatory under Section 138.

We urge you to strengthen this proposed regulation as follows:

1. The language of the disclosure notice does not identify the Board of Podiatric Medicine as being the primary regulator of DPMs in California. While the BPM is part of the MBC, the BPM is the primary regulator of DPMs in this State. The Board’s most recent sunset review report (2006) states: “Known today as the California Board of Podiatric Medicine (BPM), the Board licenses DPM residents and practitioners, reviews and approves podiatric medical schools and postgraduate residency programs annually, and disciplines DPMs under the Medical Practice Act” (at page 6). Indeed, if the MBC were the primary regulator of DPMs, it would not be necessary for the BPM to adopt Section 1399.730 because the Medical Board has already adopted a similar regulation. Consumers Union believes the language of the notice should include the Board’s name.

2. In addition to requiring the language in the proposed regulation, the Board should require inclusion of this statement in the notice: “Complaints about care may be submitted to the MBC.” Without this additional statement, the notice simply provides contact information, but does not clearly inform patients of the reasons why they may contact the MBC.

3. The regulation should require DPMs to post the information in a prominent place in their waiting areas AND provide the notice on a document given to a patient, rather than allowing DPMs to choose one of the three notice options. An exception could be made only for those DPMs who do not have an office to comply by using only a notice given to the patient.

Requiring DPMs to post a sign in the waiting area of their offices would be the most effective method of informing the public of the BPM's existence and availability. Posting license notices is a standard, time honored, effective method recognized widely among professionals and consumers. Common sense, hand in hand with consumer interests, dictates that such a requirement take effect for the licensees of the BPM. In addition, requiring that DPMs also provide notice in a document given to patients will ensure that patients have access to the BPM's contact information even after leaving a DPM's office or in the event that they did not see the sign.

4. The regulation should require DPMs to post the notice in English and in any other language regularly encountered by the DPM and staff. DPMs can easily identify the most commonly used languages in their service areas by referring to the Medi-Cal Managed Care Division's Threshold and Concentration Standard Languages data. See MMCD All Plan Letter 02003, June 7, 2002. The BPM should make available to DPMs on its website translations of the notice in the 13 threshold languages. DPMs can use the translations for the languages most common in their areas.

The adoption of Section 1399.730, as modified, will make consumers better informed and will increase communication between consumers and the BPM, providing a warning system for the BPM to better effectuate its regulatory and consumer protection roles. The importance of safe medical care to all consumers cannot be overstated as such care can truly be a "matter of life or death." Certainly, patients putting their lives and those of their loved ones in the hands of a DPM deserve clear notice of the name of the licensing authority, their right to lodge a complaint, and the contact information to do so.

For these reasons, Consumers Union is in support of Section 1399.730 and urges you to make the above-suggested changes.

Sincerely

A handwritten signature in black ink, appearing to read "Elizabeth Imholz", with a stylized flourish at the end.

Elizabeth Imholz  
Special Projects Director  
Consumers Union