



**MEDICAL BOARD OF CALIFORNIA**  
**Executive Office**



**DATE:** November 20, 2015

**ACTION:** Notice of Decision on Petition for Rulemaking Action

**SUBJECT:** Petition by the Consumers Union Safe Patient Project Requesting Amendments to the Manual of Model Disciplinary Orders and Disciplinary Guidelines, Incorporated by Reference into Title 16 of the California Code of Regulations section 1361.

**AGENCY RESPONDING TO PETITION**

Medical Board of California (Board), 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815.

**PETITIONERS/PETITION**

The Consumers Union Safe Patient Project (CUSPP) filed a Petition with the Board on October 8, 2015, requesting the Board to amend the Manual of Model Disciplinary Orders and Disciplinary Guidelines (Disciplinary Guidelines), incorporated by reference into Title 16 of the California Code of Regulations (CCR) section 1361. The Petition was presented to the Board for consideration on October 30, 2015. The Board voted to deny the Petition. On November 5, 2015, CUSPP was notified that the Board would provide a formal written response to the Petition on or before December 1, 2015. Pursuant to the requirements of Government Code section 11340.7, the Board issues this Decision on the CUSPP Petition.

**CALIFORNIA CODE OF REGULATIONS REQUESTED TO BE AFFECTED**

Title 16 CCR section 1361, which incorporates the Board's Disciplinary Guidelines by reference.

**AUTHORITY**

Pursuant to the authority provided by Section 2018 of the Business and Professions Code the Board may adopt, amend and repeal regulations as necessary to carry into effect the provisions of law relating to the practice of medicine.

**SUMMARY OF THE ACTION REQUESTED**

CUSPP petitioned the Board to amend its Disciplinary Guidelines to require that physicians on probation disclose their probationary status to their patients, and to specifically require as standard conditions of probation the following:

1. That physicians who continue to see patients be required to inform their patients of their probationary status;

2. That patients be notified of the physician's probationary status when the patient contacts the physician's office to make an appointment;
3. That this disclosure be required to be in writing and signed at the time of the patient's appointment by each patient the physician sees while on probation to acknowledge the notice;
4. That this disclosure be posted in the physician's office in a place readily apparent to patients;
5. That the written disclosures described in 3 and 4 above include at least a one-paragraph description of the offenses that led the Board to place the physician on probation;
6. That the written disclosures include a description of any practice restrictions placed on the physician;
7. That the patient be referred for more details to Board online documents related to the physician's probation;
8. That the physician maintains a log of all patients to whom the required oral notification was made. The log should contain the following: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date notification was made; 5) a copy of the notification given; and 6) a signed attestation by the patient that notification was received. The physician shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

## **BOARD DETERMINATION**

After review and discussion, the Board voted to deny the Petition for the reasons described below.

First, details relating to physician discipline are already accessible to the public by several different means, including via the Board's website; by receiving the Board's email notifications regarding physician discipline; and by calling or writing the Board for such information. Patients should obtain the public information from the Board relating to physician discipline to ensure they are getting complete and accurate details at a time when they can consider the implications and put the matter into context as it relates to their own personal care. Physicians and their staff may not have time to go over all the details that are accessible from the Board, and patients should not be put in the position of having to make a decision based on limited information at the moment they are seeking care.

Second, receiving limited disciplinary information from the physician or his or her staff at the time care is sought may irreparably harm the physician-patient relationship in a way that does not further patient protection. Patients who need care may delay or forego treatment altogether due to limited or no other provider options in the area. Patients would be better served by obtaining the disciplinary details from the Board and determining whether and how their physicians' disciplinary history may impact their own health care situation. Patients are free to ask their physicians about their disciplinary history, but having the details ahead of time will help give patients important context.

Third, where the Board determines patient notification of probationary status is warranted, it is already required by the Disciplinary Guidelines. When such notification is not indicated pursuant to the Disciplinary Guidelines, the direct notification to patients may send a mixed message about the physician's ability to practice. When a physician is placed on probation, the Board has made the determination that the physician is safe to practice under specified terms and conditions. When the Board determines that a physician is not safe to practice, his or her license is suspended or revoked. Accordingly, requiring physicians to provide what amounts to a "warning" to their patients about their disciplinary history when they are placed on probation for any reason may lead to confusion about whether the physicians are safe to practice. Again, relying on the Board documents relating to physician discipline will provide details and context to patients who want to know about their physicians' history. Significantly, no health care board or bureau within the Department of Consumer Affairs requires licensees to notify patients of their disciplinary status as a standard term of probation in all cases.

Finally, the Board is concerned that requiring physicians to notify patients whenever they are put on probation for any reason will have a negative impact to the Board's public protection efforts. Currently, the Board is able to resolve most complaints warranting discipline by stipulated settlement. Settling disciplinary cases leads to earlier resolutions and gets physicians on probation faster than if the cases had to go through administrative hearings. Likewise, placing physicians on probation via stipulation imposes monitoring requirements and other terms and conditions sooner than if the case had to be scheduled for hearing. Requiring physicians to notify their patients of their probationary status at medical appointments would likely lead to fewer stipulated settlements, and delay resolution of all disciplinary cases waiting for hearing dates. This result would be counter to the Board's priority of public protection.

## **CONCLUSION**

For the reasons set forth above, the Board denied CUSPP's Petition and will not initiate a rulemaking action to amend the Disciplinary Guidelines incorporated by reference into Title 16 CCR section 1361 as requested. The Board, however, appreciates and shares CUSPP's interest in patient safety, and looks forward to working with CUSPP and other stakeholders to improve patient protection and awareness of the Board and its role as a consumer protection agency.

## **CONTACT PERSON**

Inquiries concerning this decision may be directed to Kerrie Webb, Senior Staff Counsel, Medical Board of California, by mail at: 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, by telephone at: 916-263-2389, or by email at [Kerrie.Webb@mbc.ca.gov](mailto:Kerrie.Webb@mbc.ca.gov).

## **AVAILABILITY OF PETITION**

The Petition is available upon request directed to the contact person listed above.