

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: Delegation of Certain Functions to the Executive Officer

Section Affected: Amend section 306 of Article 1 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 12,000 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. Finally, the Act, section 10(b), authorizes the Board to refuse to grant, or suspend or revoke, a

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

license to practice chiropractic in this state, or place the licensee upon probation or issue a reprimand to the licensee for violation of the rules and regulations adopted by the Board in accordance with the Act, or for any cause specified in the Act.

CCR section 306, titled “Delegation of Certain Functions”, was last amended by the Board on October 5, 2007, and specifies the administrative functions in connection with disciplinary proceedings that have been delegated by the Board to its executive officer.

In 2010, the Department of Consumer Affairs (DCA) launched the Consumer Protection Enforcement Initiative (CPEI) in response to a series of investigative articles published by the *Los Angeles Times* concerning the effectiveness of healing arts boards under DCA’s jurisdiction.

The primary goal of CPEI was to strengthen consumer protection by streamlining and expediting enforcement processes. As part of this initiative, DCA sponsored Senate Bill (SB) 1111 (Negrete McLeod) during the 2009–2010 legislative session. The bill sought to codify a comprehensive set of recommendations developed by DCA to improve the healing arts boards’ enforcement programs. These recommendations included measures to reduce case processing times, enhance transparency, and ensure timely disciplinary action against licensees who pose a risk to public safety.

Although SB 1111 ultimately was not enacted, DCA has continued to encourage healing arts boards to independently review and discuss the proposed statutory changes and consider implementing them through regulatory changes or policy amendments where feasible. In response, the Board discussed the provisions of SB 1111 and among other findings, concluded it could enhance its consumer protection mandate and expedite its handling of enforcement cases by delegating additional authority to its executive officer to carry out routine, non-controversial administrative and investigative functions.

The Board has drafted a proposal amending CCR section 306 to broadly summarize and clarify the functions related to investigative and administrative proceedings that have already been delegated to its executive officer and to further delegate and confer upon its executive officer the authority to:

- Order examinations of licensees whenever it appears they may be unable to practice safely due to mental illness, or physical illness affecting competency, pursuant to Business and Professions Code (BPC) section 820.
- Issue default decisions where licensees have failed to file a notice of defense or to appear at a hearing.
- Grant motions to vacate a default decision.
- Approve settlement agreements for the revocation, surrender, or interim suspension of a license.

At the October 19, 2023 meeting, the Board approved proposed text amending CCR section 306, directed staff to commence the formal rulemaking process, and authorized the executive officer to make any non-substantive or technical changes to the package. Since then, Board staff have corrected technical errors in the citations to sections of the Act that have no substantive effect on the regulation.

Anticipated benefits from this regulatory action:

This proposal benefits the health and welfare of California residents by authorizing the Board's executive officer to promptly carry out routine, non-controversial administrative and investigative functions on behalf of the Board, allowing the Board to pursue its mission of consumer protection and prevent potential harmful behavior from licensees. The proposal is also consistent with the enforcement process improvements originally envisioned in DCA's CPEI.

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

1. Amend the title of Section 306.

Purpose: The title of CCR section 306 is being amended from "Delegation of Certain Functions" to "Delegation of Certain Functions to the Executive Officer".

Rationale: This revision clarifies that this section specifically pertains to the Board's delegation of certain functions to its executive officer, not to any other party or entity, thereby aligning the section title with its content and making the Board's regulations easier to navigate by section title.

2. Amend Section 306 to broadly summarize and clarify the existing functions that have been delegated to the executive officer.

Purpose: The existing text stating the power and discretion of the Board to "receive and file accusations; issue notices of hearing, statements to respondent, statements of issues, subpoenas, and subpoenas duces tecum; receive and file notices of defense; set and calendar cases for hearing; certify and deliver or mail copies of decisions; and perform other functions necessary to expedite the business of the board in connection with the conduct of the proceedings mentioned in Section 305 hereof in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code are hereby delegated to the Executive Officer" is being deleted and replaced with the following text:

"Except for those powers reserved exclusively to the 'agency itself' as set forth under the Administrative Procedure Act (Government Code section 11500 et seq.), the power and discretion conferred by law upon the Board to [...] initiate, review, and prosecute accusations and statements of issues pursuant to Government Code section 11529 [...] and to perform all functions necessary to the dispatch of the business of the Board in connection with investigative and administrative

proceedings under the jurisdiction of the Board are hereby delegated to and conferred upon the Executive Officer of the Board.”

Rationale: The current regulation outlines certain delegated administrative functions related to disciplinary proceedings and also includes a broad provision allowing the executive officer to perform “other functions” necessary to expedite the Board’s business. However, the term “other functions” in this context is vague and can create uncertainty about which responsibilities fall under the executive officer’s delegated authority versus those reserved for the Board.

The proposed amendments eliminate this uncertainty by explicitly authorizing the executive officer to initiate, review, and prosecute accusations and statements of issues and to perform all necessary administrative and investigative functions related to disciplinary matters except for those powers that are exclusively reserved to the Board under the Administrative Procedure Act. This clarification ensures the appropriate distinction between the executive officer’s investigative and prosecutorial role and the Board’s adjudicative role in disciplinary matters.

3. Amend Section 306 to delegate additional authority to the executive officer to order examinations pursuant to BPC section 820.

Purpose: The Board is adding delegated authority to allow the executive officer to order examinations pursuant to BPC section 820.

Rationale: BPC section 820 authorizes the Board to order a licensee to be examined by one or more physicians and surgeons or psychologists designated by the agency whenever it appears that the licensee may be unable to practice safely because their ability to practice is impaired due to mental illness, or physical illness affecting competency. The results of the examination may be used as direct evidence in disciplinary proceedings conducted pursuant to BPC section 822, which may result in license revocation, suspension, probation, or other appropriate action, if the licensee’s ability to practice safely is found to be impaired.

It is necessary for the Board to delegate authority to order examinations under BPC section 820 to its executive officer because these examinations are part of the investigative phase of an enforcement case. Direct involvement by Board members at this preliminary stage could compromise both their impartiality and the licensee’s right to due process in any subsequent disciplinary proceedings that rely on the examination findings. Delegating this responsibility to the executive officer allows the investigation to proceed efficiently and safeguards the Board’s ability to remain neutral and objective when rendering a final decision.

4. Amend Section 306 to delegate additional authority to the executive officer to issue default decisions and grant motions to vacate a default decision.

Purpose: The Board is adding delegated authority to allow the executive officer to issue default decisions where licensees have failed to file a notice of defense or appear at a hearing and to grant motions to vacate a default decision.

Rationale: Government Code section 11520 authorizes the Board to issue a default decision revoking a license when a licensee fails to file a notice of defense or appear at a hearing to contest the allegations in a properly filed accusation. Currently, the default decision and accompanying evidentiary packet prepared by the Attorney General's Office are sent to the Board Chair for review and signature prior to being served by Board staff.

Delegating authority to the executive officer to review, sign, and issue default decisions is necessary because these actions are procedural and involve uncontested matters where the licensee has waived their right to participate in the disciplinary process. This delegation enhances administrative efficiency and also preserves the integrity of the Board's disciplinary proceedings. By removing the Board Chair's involvement in reviewing investigatory materials in default cases, the Chair remains impartial and able to participate in any future deliberations should the default decision be vacated and the case proceed to a contested hearing. This approach upholds the licensee's right to due process and ensures the full Board can fairly and objectively adjudicate the matter if it is reopened.

Government Code section 11520 permits a licensee to file a written motion within seven days after service of a default decision requesting that the decision be vacated and stating the grounds for the request. The Board has the discretion to grant such a motion upon a showing of good cause, such as failure to receive notice, mistake, inadvertence, surprise, or excusable neglect.

It is appropriate for the Board to delegate authority to the executive officer to review and grant these motions because they are often routine and based on common situations, such as a licensee's failure to update their address of record or being away from their residence for an extended period of time. Requiring a Board vote to grant these straightforward requests unnecessarily delays the disciplinary process and impedes consumer protection. Importantly, the executive officer is still able to elevate any motion to the Board for consideration if the circumstances are unusual or the justification does not clearly demonstrate good cause to vacate the default decision.

5. Amend Section 306 to delegate additional authority to the executive officer to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Purpose: The Board is adding delegated authority to allow the executive officer to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Rationale: After an accusation has been filed against a licensee, the licensee and the Board's executive officer may negotiate a stipulated settlement that results in license revocation, surrender, probation, or public reprimand, depending on the facts of the case and any mitigating or aggravating factors. Under current law, all proposed stipulated settlements must be submitted to the Board for a vote to adopt or reject as the final decision.

It is appropriate to delegate authority to the executive officer to approve settlement agreements for the revocation or surrender a license because these outcomes represent the most severe form of discipline—permanently removing a licensee from practice—and can be implemented significantly faster if they are finalized by the executive officer without requiring a Board vote.

In such cases, the licensee has voluntarily agreed to the outcome the Board initially sought through the filing of an accusation, eliminating the need for deliberation on the matter by the Board. Unlike settlements involving probation or public reprimand, which may require the Board to exercise greater judgment or discretion, revocation and surrender agreements are straightforward and do not involve testing requirements, ongoing monitoring of practice, or complex terms and conditions. Further, the executive officer is still able to refer these agreements to the Board for a vote if they raise policy concerns or warrant broader discussion.

BPC section 494 allows the Board to, upon petition, issue an interim order suspending any licensee or imposing license restrictions such as biological fluid testing, supervision, or remedial training, when two conditions are met: 1) the licensee has engaged in acts or omissions constituting a violation of the Act or has been convicted of a crime substantially related to the practice of chiropractic; and 2) permitting the licensee to continue practicing without restrictions would endanger the public health, safety, or welfare. In serious cases where the issuance of such an order is imminent, a licensee may choose to enter into a stipulated settlement with the Board for the interim suspension of their license rather than contest the petition at a hearing.

Delegating authority to the executive officer to approve settlement agreements for the interim suspension of a license is appropriate because it allows for immediate action to protect the public by temporarily removing the licensee from practice while disciplinary proceedings are pending. This delegation also promotes operational efficiency, as interim suspension agreements do not require the same level of judgment and

discretion as settlements involving temporary practice restrictions. Additionally, it helps preserve the Board's neutrality by preventing any premature exposure to investigative evidence, thereby ensuring the Board members can remain impartial when deciding the final outcome of the case.

6. Amend Note.

Purpose: The Note is being amended to correct the citations to the Act, sections 3 and 4, within the authority and reference sections and to add references to BPC section 820, Government Code sections 11500 through 11529, and section 10 of the Act.

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:

- "Consumer Protection Enforcement Initiative: A Systematic Solution to a Systemic Problem," Department of Consumer Affairs, January 21, 2010
- "Consumer Protection Enforcement Initiative: BCP Independent Verification & Validation Report," Department of Consumer Affairs, March 2010
- Senate Bill 1111 (Negrete McLeod), 2009–2010 Legislative Session, as Amended in Senate on April 12, 2010
- 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

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:

Existing law, section 10(b) of the Act and BPC section 820, already authorizes the Board to initiate and carry out certain investigative and disciplinary proceedings against licensed doctors of chiropractic. This proposal delegates the routine, non-controversial portion of this existing authority from the Board to its executive officer. This proposal 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 delegates existing functions related to investigative and disciplinary proceedings against licensed doctors of chiropractic from the Board to its executive officer. This delegation of existing authority does not impact jobs within the state.
- It will not create new business or eliminate existing businesses within the State of California because the proposal delegates existing functions related to investigative and disciplinary proceedings against licensed doctors of chiropractic from the Board to its executive officer. This delegation of existing authority does not impact businesses within the state.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal delegates existing functions related to investigative and disciplinary proceedings against licensed doctors of chiropractic from the Board to its executive officer. This delegation of existing authority does not impact the expansion of businesses within the state.
- This regulatory proposal benefits the health and welfare of California residents and enhances consumer protection by authorizing the Board's executive officer to promptly carry out routine, non-controversial administrative and investigative functions on behalf of the Board.
- 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.