

BOARD OF PODIATRIC MEDICINE

Modified Text – Citable Offenses

Changes to the originally proposed language are shown by double underline for new text and underline with strikeout for deleted text.

Amend section 1399.696 and section 1399.697 of Division 13.9 of Title 16 of the California Code of Regulations to read as follows:

1399.696. Citations and Fines.

(a) The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed doctor of podiatric medicine of the provisions of law referred to in this section. In all cases concerning medical quality of care, or requiring medical judgement, the executive officer shall base his decision on the findings of a board-approved medical consultant or expert.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(c) The amount of any fine to be levied by the executive officer shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code and shall be within the range set forth below. The fine for a violation of the following provisions shall be from \$100.00 to \$2500.00. ~~A fine of over \$2500.00 but not more than \$5,000.00 may be assessed if one or more of the following circumstances apply:~~
~~The cited person has received two or more prior citations for the same or similar violations;~~
~~The citation involves multiple violations that demonstrate a willful disregard for the law.~~

- (1) Business and Professions Code Section 119
- (2) Business and Professions Code Section 125
- (3) Business and Professions Code Section 125.6
- (4) Business and Professions Code Section 496
- (5) Business and Professions Code Section 650
- (6) Business and Professions Code Section 650.1
- (7) Business and Professions Code Section 651
- (8) Business and Professions Code Section 654.1
- (9) Business and Professions Code Section 654.2
- (10) Business and Professions Code Section 655.5
- (11) Business and Professions Code Section 702

- (12) Business and Professions Code Section 810
- (13) Business and Professions Code Section 2021
- (14) Business and Professions Code Section 2052
- (15) Business and Professions Code Section 2054
- (16) Business and Professions Code Section 2221.1
- (17) Business and Professions Code Section 2234
- (18) Business and Professions Code Section 2236
- (19) Business and Professions Code Section 2238
- (20) Business and Professions Code Section 2239
- (21) Business and Professions Code Section 2242
- (22) Business and Professions Code Section 2243
- (23) Business and Professions Code Section 2255
- (24) Business and Professions Code Section 2256
- (25) Business and Professions Code Section 2259
- (26) Business and Professions Code Section 2259.5
- (27) Business and Professions Code Section 2261
- (28) Business and Professions Code Section 2262
- (29) Business and Professions Code Section 2263
- (30) Business and Professions Code Section 2264
- (31) Business and Professions Code Section 2266
- (32) Business and Professions Code Section 2271
- (33) Business and Professions Code Section 2272
- (34) Business and Professions Code Section 2273
- (35) Business and Professions Code Section 2274
- (36) Business and Professions Code Section 2278
- (37) Business and Professions Code Section 2285
- (38) Business and Professions Code Section 2286
- (39) Business and Professions Code Section 2305
- (40) Business and Professions Code Section 2410
- (41) Business and Professions Code Section 2415
- (42) Business and Professions Code Section 2439
- (43) Business and Professions Code Section 2440
- (44) Business and Professions Code Section 2441
- (45) Business and Professions Code Section 2496
- (46) Business and Professions Code Section 2630
- (47) Business and Professions Code Section 2472
- (48) Business and Professions Code Section 2474
- (49) Business and Professions Code Section 4080
- (50) Business and Professions Code Section 4081
- (51) Business and Professions Code Section 17500
- (52) Business and Professions Code Section 17537.11
- (53) Health and Safety Code Section 1795
- (54) Health and Safety Code Section 11167
- (55) Health and Safety Code Section 11190
- (56) Health and Safety Code Section 11191
- (57) Health and Safety Code Section 123110

- (58) Penal Code Section 11166
- (59) Title 16 Cal. Code Reg. Section 1338(c)
- (60) Title 16 Cal. Code Reg. Section 1399.676
- (61) Business and Professions Code Section 2225(d)

In her or his discretion, the executive officer may issue an order of abatement without levying a fine for the first violation of any provision set forth in this subsection.

(d) Notwithstanding the administrative fine amounts specified in subsection (c) of section 1399.696, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:

1. The citation involves a violation that has an immediate relationship to the health and safety of another person.

2. The cited person has a history of two or more prior citations of the same or similar violations.

3. The citation involves multiple violations that demonstrate a willful disregard of the law.

4. The citation involves a violation or violations perpetrated against a senior citizen or disabled person.

~~(d)~~ (e) In her or his discretion, the executive officer may issue a citation under Section 1399.696 to a licensee for a violation of a term or condition contained in the decision placing that licensee on probation.

~~(d)~~ ~~(e)~~ (f) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the executive officer in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

~~(e)~~ ~~(f)~~ (g) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served or received. Such failure may result in disciplinary action being taken by the board or other appropriate judicial relief being taken against the person cited.

~~(f)~~ ~~(g)~~ (h) The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or

who have performed services for which licensure is required as a doctor of podiatric medicine under the Medical Practice Act but who do not possess a license. Each citation issued shall contain an order of abatement. Where appropriate the executive officer shall levy a fine for such unlicensed activity in accordance with subdivision (b)(3) of Section 125.9 of the code. The provisions of subsections (b), (d) and (e) of this section shall apply to the issuance of citations for unlicensed activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 148 and 2470, Business and Professions Code. Reference: Sections 12.5, 125.9 and 148, Business and Professions Code.

1399.697. Contest of Citations.

(a) In addition to requesting a hearing provided for in subdivision (b)(4) of Section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the executive officer in writing of his or her request for an informal conference with the executive officer regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The executive officer shall hold, within 30 days from the receipt of the request, an informal conference with the person cited or his or her legal counsel or authorized representative. At the conclusion of the informal conference the executive officer may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The executive officer shall state in writing the reasons for his or her action and serve or mail, as provided in subsection ~~(e)~~ ~~(f)~~ (g) of Section 1399.696, a copy of his or her findings and decision to the person cited within ten days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the executive officer. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b)(4) of Section 125.9.

NOTE: Authority cited: Sections 125.9 and 2470, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.