

1 CALIFORNIA BOARD OF PODIATRIC MEDICINE  
2 FINAL STATEMENT OF REASONS  
3  
4

5 Hearing Date: February 18, 2010  
6

7 Subject of Proposed Regulations: Notice to Consumers by Doctors of Podiatric Medicine  
8

9 Section Affected: Title 16, Article 13, Section 1399.730  
10

11  
12 **Updated Information**  
13

14 The Authority and Reference section on page one of the Notice of Proposed Regulations  
15 should reference Business and Professions Code Section 680 rather than 160.  
16

17 The Initial Statement of Reasons is included in the file. The information contained  
18 therein is updated as follows:  
19

20 The California Board of Podiatric Medicine (BPM) voted February 18, 2010 to adopt this  
21 proposed regulation in order to comply with Business and Professions (B&P) Code  
22 Section 138 in a manner as consistent and uniform as possible with the Medical Board  
23 of California (MBC).  
24

25 The Medical Board adopted its proposed Notice to Consumers regulation (Section  
26 1355.4) July 24, 2009. The Office of Administrative Law approved it March 29, 2010  
27 (OAL File 2010-0217-01 S) effective June 27, 2010.  
28

29 BPM is part of the MBC and "within the jurisdiction" of the MBC (B&P Code Section  
30 2460) and it is the MBC that licenses Doctors of Podiatric Medicine (DPMs) "upon the  
31 recommendation" of BPM (B&P Code Sections 2479, 2486, 2488).  
32

33 Medical Board staff offices perform DPM license verifications and its Central Complaint  
34 Unit receives, processes and manages complaints against DPMs, under a shared  
35 services budget arrangement with BPM, just as it does for MDs. It acknowledges  
36 consumer complaints and corresponds directly with all complainants regarding the status  
37 and resolution of their complaints. MBC also coordinates the work of MBC investigators  
38 investigating DPM cases. The MBC Discipline Coordination Unit likewise manages DPM  
39 cases referred to the Office of the Attorney General for disciplinary purposes.  
40

41 BPM has its own authority to adopt regulations (B&P Code Section 2470).  
42

43 Following the hearing, the BPM on February 18, 2010 made two amendments to the  
44 proposed regulation prior to its adoption. Specifically, it deleted "the board" in  
45 paragraphs (a) and (b)(2) of the proposed language and inserted in lieu thereof "the  
46 California Board of Podiatric Medicine."  
47

48 The proposed Notice to Consumers is unchanged:

1 NOTICE TO CONSUMERS

2  
3 Doctors of Podiatric Medicine are licensed and regulated  
4 by the Medical Board of California

5  
6 (800) 633-2322

7  
8 www.bpm.ca.gov

9  
10  
11  
12 **Local Mandate**

13  
14 A mandate is not imposed on local agencies or school districts.

15  
16  
17 **Small Business Impact**

18  
19 This regulation will not have a significant adverse economic impact on businesses.  
20 Although many businesses will be required to comply, the economic impact will be  
21 minor. Doctors of podiatric medicine will only be required to post a sign, which will be  
22 available for downloading on the BPM's web site, or include the brief written notice in a  
23 statement to be signed by the patient, or include the notice on another document given  
24 to each patient. The proposed regulation permits the doctor to choose any of these  
25 three options. No licensee commented on the proposed regulation.

26  
27  
28 **Consideration of Alternatives**

29  
30 BPM proposes this regulation pursuant to B&P Code Section 138 in order to comply with  
31 Section 138, and to do so as uniformly to the Medical Board of California (of which BPM  
32 is part) as practicable.

33  
34 No reasonable alternative which was considered or that has otherwise been identified  
35 and brought to the attention of the BPM would be either more effective in carrying out  
36 the purpose for which the action is proposed or would be as effective and less  
37 burdensome to affected private persons than the proposed regulation.

38  
39  
40 **Public Comments and BPM Responses**

41  
42 The BPM received written comments from four organizations:

- 43  
44 • California Orthopaedic Association (COA)  
45 • Medical Board of California (MBC)  
46 • Center for Public Interest Law (CPIL)  
47 • Consumers Union (CU)

1 CPIL and CU supported adoption with modifications. MBC suggested modifications.  
2 COA stated it “would urge the Board to reconsider the need for this regulatory change.”

3  
4 At the hearing, two persons presented oral statements:  
5

6 Mr. Gil DeLuna of the Department of Consumer Affairs (DCA) thanked the BPM for  
7 moving forward with the proposed regulation, commenting it is another example of high  
8 standards for consumer protection.  
9

10 Mr. Andrew Miazga of the Center for Public Interest Law (CPIL) also spoke in support of  
11 the proposed regulation. He referenced CPIL’s written comments in which “CPIL  
12 supports the proposed adoption of new section 1399.730, with two suggested  
13 modifications,” which he briefly summarized in his oral testimony.  
14

15 BPM expresses appreciation to all parties taking the time and trouble to review and  
16 comment on the proposed rulemaking, and is responding comprehensively to all  
17 comments submitted.  
18

19 The following comments, recommendations and objections were made:  
20  
21

22 **(1) Text of 1399.730**

23  
24 COA comment:

25  
26 We . . . find Section 1399.730 (a) of the proposed regulation confusing. This  
27 section states that the podiatric licensee is, “licensed and regulated by the  
28 board.” Are you referring to the Medical Board of California or the Board of  
29 Podiatric Medicine? If you are referring to the Medical Board of California,  
30 then you need to change other regulations under Title 16 which refer to the  
31 Board of Podiatric Medicine as the regulator of podiatrists licensed in  
32 California to be consistent. . . . We note that Section 1399.653 (a) defines  
33 “Board” as the California Board of Podiatric Medicine. This Section would  
34 then be in conflict with your definition of “Board” in Section 1399.730 (a).  
35

36 MBC comment:

37  
38 Section 1399.730 of the proposed regulation directs a Doctor of Podiatric  
39 Medicine (DPM) to provide notice to each patient of the fact that the  
40 licensee is licensed and regulated “by the board,” which is defined in  
41 Section 1399.653 (a) to mean the “California Board of Podiatric Medicine.”  
42

43 BPM response:

44  
45 The BPM accepted these comments.  
46

47 B&P Code Section 2461 and Section 1399.653 of the BPM regulations define “board” as  
48 the BPM.

1 Following its rulemaking hearing, the BPM on February 18, 2010 made two  
2 amendments to the proposed regulation prior to its adoption. Specifically, it deleted “the  
3 board” in paragraphs (a) and (b)(2) and inserted in lieu thereof “the California Board of  
4 Podiatric Medicine.”  
5  
6

7 **(2) Text of Notice**  
8

9 COA comment:

10  
11 In your Statement of Reasons, you cite that the need for this additional patient  
12 notification is to, “make consumers aware that doctors of podiatric medicine  
13 are licensed by the Medical Board of California and provide information on  
14 how to contact the Board should patients need assistance.”  
15

16 We respectfully disagree that this new notice will help consumers reach  
17 the correct person if they need assistance with podiatric issues or should  
18 they want to file a complaint.  
19

20 While it may be technically correct to state that the Medical Board of  
21 California issues the podiatric licenses, we believe it will be confusing to  
22 patients to direct them to the Medical Board which is more commonly  
23 known to address issues involving physicians and surgeons. In fact, when  
24 you call the number that you are suggesting on the notice – the 800  
25 number is to the Medical Board of California and they deny that podiatrists  
26 are licensed through the Medical Board and refer you back to the Board of  
27 Podiatric Medicine.  
28

29 We believe directing patients first to the Medical Board only to be referred  
30 to the Board of Podiatric Medicine will only be confusing and delay  
31 patient’s from actually getting to the correct Board to discuss podiatric  
32 issues.  
33

34 It is also confusing on the notice to give patients the Medical Board of  
35 California phone number, but the website for the Board of Podiatric  
36 Medicine.  
37

38 MBC comment:

39  
40 The Medical Board has a concern about the actual wording on the notice  
41 statement. Section 1399.730 of the proposed regulation directs a Doctor  
42 of Podiatric Medicine (DPM) to provide notice to each patient of the fact  
43 that the licensee is licensed and regulated “by the board,” which is defined  
44 in Section 1399.653 (a) to mean the “California Board of Podiatric  
45 Medicine.” However, the proposed statement to be posted pursuant to  
46 this rulemaking indicates that DPMs “are licensed by the Medical Board of  
47 California.” Therefore, we raise this concern as a matter of **consistency**,  
48 as set forth in Section 11349(d) of the Administrative Procedure Act

1 (APA).  
2

3 Further, while we recognize that Business and Professions Code Section  
4 2460 places the BPM under the jurisdiction of the Medical Board, to the  
5 average consumer, this is a merely a technicality. In the eyes of the  
6 public, DPMs are licensed and regulated by the BPM, and the proposed  
7 statement to be posted is confusing, especially since the BPM web site is  
8 included in the statement. Therefore, we raise this concern as a matter of  
9 **clarity**, as set forth in Section 11349(c) of the APA.

10  
11 Both of these issues could be addressed by replacing “Medical Board of  
12 California” with “Board of Podiatric Medicine.” [We acknowledge that the  
13 telephone number provided will connect callers with the Medical Board’s  
14 “Consumer Information Unit,” but since our call center handles such calls  
15 for BPM’s consumers, we recognize that the Medical Board’s telephone  
16 number must rightly be listed on the statement to be posted.]  
17

18 CPIL comment:  
19

20 The proposed language requires “a licensee engaged in the practice of  
21 podiatric medicine” to “provide notice to each patient of the fact that the  
22 licensee is licensed and regulated by the board.” Under section 1399.653  
23 of BPM’s regulations, the term “board”--as used in BPM’s regulations--  
24 means the California Board of Podiatric Medicine. However, the proposed  
25 language of the notice then tells consumers that DPMs are licensed and  
26 regulated by the Medical Board of California. This seems inconsistent and  
27 somewhat confusing. CPIL understands that BPM is “within the  
28 jurisdiction” of the Medical Board (Business and Professions Code section  
29 2460); that DPMs are subject to the enforcement provisions of the Medical  
30 Practice act; and that MBC issues licenses to DPMs upon the  
31 recommendation of BPM (sections 2486 and 2488). Although MBC could,  
32 in theory, “regulate” DPMs, in reality it does not. BPM regulates DPMs  
33 through its statutes, regulations, and enforcement decisions. For clarity,  
34 CPIL suggests inclusion of the term “Board of Podiatric Medicine” in the  
35 required notice. For example, the notice could read: “Doctors of Podiatric  
36 Medicine are licensed and regulated by Board of Podiatric Medicine, part  
37 of the Medical Board of California,” or “Doctors of Podiatric Medicine are  
38 licensed by the Medical Board of California and regulated by the Board of  
39 Podiatric Medicine,” or something to that effect. . . . [*footnote*: Indeed,  
40 several “BPM E-Updates” posted on BPM’s Web site state: “The Board of  
41 Podiatric Medicine (BPM) is the unit of the Medical Board of California  
42 which administers licensing of DPMs under the State Medical Practice  
43 Act.”]  
44

45 CU comment:  
46

47 The language of the disclosure notice does not identify the Board of  
48 Podiatric Medicine as being the primary regulator of DPMs in California.

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

11  
12 In addition to requiring the language in the proposed regulation, the Board  
13 should require inclusion of this statement in the notice: "Complaints about  
14 care may be submitted to the MBC." Without this additional statement, the  
15 notice simply provides contact information, but does not clearly inform  
16 patients of the reasons why they may contact the MBC.

17  
18 BPM response:

19  
20 The BPM appreciated these comments, recommendations and objections, but with  
21 respect rejected them because:

- 22
- 23 • BPM is part of MBC (Section 2460)
  - 24 • DPMs are in fact licensed by the MBC (Sections 2479, 2486, 2488)
  - 25 • It is the MBC Central Complaint unit that takes and manages public complaints  
26 against DPM and MD doctors
  - 27 • It is the MBC Central Complaint unit that communicates with consumers about their  
28 complaints by phone and written communications
  - 29 • Consumers in fact assume doctors are licensed by MBC and almost always file DPM  
30 complaints directly with MBC, as in fact is appropriate
  - 31 • MBC annually assesses BPM's budget for these shared services
  - 32 • If patients called BPM's phone numbers, BPM would have to refer or transfer them to  
33 the MBC Central Complaints (800) 633-2322 number, causing delay, frustration and  
34 poor service
  - 35 • If the Notice listed BPM rather than MBC consumers could think they reached the  
36 wrong agency upon dialing (800) 633-2322, which is the number they almost always  
37 call directly now and have in the past, appropriately and correctly
  - 38 • BPM's proposed Notice is designed for maximum clarity for consumers, the people  
39 for whom it is intended
  - 40 • Given MBC Central Complaints staff turnover, occasionally a new employee there  
41 needs to be briefed that they are taking calls on DPMs as well as MDs, but MBC  
42 supervisors readily resolve this when it does happen once every couple of years
  - 43 • BPM's office is not staffed to take these calls--it is a service MBC is paid to provide
  - 44 • Logging on to BPM's website will cause no confusion because each web page  
45 clearly indicates that BPM is part of MBC (as does BPM letterhead).
  - 46 • The Complaints link on BPM's website takes the consumer to the MBC on-line  
47 complaint form

- 1 • There is no history of consumers being confused by DPM complaints being handled  
2 by MBC
- 3 • There is no history of consumers being confused by or about BPM's being part of the  
4 MBC
- 5 • MBC licenses more than 120,000 MDs and less than 2,000 DPMs. BPM wishes to  
6 maintain uniformity and consistency with the MBC Notice for MDs for the very  
7 purpose of not causing confusion.
- 8 • Notices to Consumers regarding DPMs will be posted in many settings where  
9 Notices are also posted regarding MDs. Having the DPM Notice refer to the Medical  
10 Board and the Medical Board's 800 number is correct and appropriate. It also keeps  
11 the information provided to patients simple and easy to understand, i.e., call the  
12 Medical Board about doctors. If notices in the same or adjacent locations listed  
13 different boards and different phone numbers, that would cause unnecessary and  
14 harmful confusion
- 15 • Listing the names of both boards, e.g., saying DPMs are licensed by one board but  
16 regulated by another is unnecessary (BPM is part of the MBC) and would be  
17 confusing
- 18 • Stating that "Complaints about care may be submitted to the MBC" would not be  
19 consistent with the MBC Notice to Consumers for MDs, which includes no such  
20 statement. BPM believes the proposed Notice adequately conveys that MBC is the  
21 place to go to for filing complaints.
- 22 • None of this is changed by BPM's having its own rulemaking authority  
23  
24

### 25 **(3) Languages Other than English**

26  
27 CPIL comment:

28  
29 CPIL believes BPM should give consideration to requiring a DPM to  
30 provide the disclosure in languages other than English where a significant  
31 portion of that DPM's patient population speaks a different language. This  
32 is easily accomplished; the Department of Managed Health Care posts on  
33 its Web site--for easy downloading and printing--a waiting room notice that  
34 has been translated into 15 other languages. BPM could do the same.  
35

36 CU comment:

37  
38 The regulation should require DPMs to post the notice in English and in  
39 any other language regularly encountered by the DPM and staff. DPMs  
40 can easily identify the most commonly used languages in their service  
41 areas by referring to the Medi-Cal Managed Care Division's Threshold and  
42 Concentration Standard Languages data. See MMCD All Plan Letter  
43 02003, June 7, 2002. The BPM should make available to DPMs on its  
44 website translations of the notice in the 13 threshold languages. DPMs  
45 can use the translations for the languages most common in their areas.  
46  
47  
48

1 BPM response:

2

3 These comments, recommendations and objections were appreciated and taken with  
4 respect, but nevertheless rejected for the present regulation because there is no similar  
5 requirement in the MBC regulation. These recommendations are well taken, however.  
6 BPM indicated at the February 18, 2010 BPM Board Meeting that, once both the MBC  
7 and BPM regulations are in effect, it would seek discussions with MBC, CPIL and CU to  
8 follow up and provide for uniform provision of Notices in additional languages. As the  
9 MBC licenses more than 120,000 MDs and less than 2,000 DPMs, it will be optimum for  
10 BPM to work with MBC on this and implement additional languages in coordination and  
11 consistently with MBC.

12

13

14 **(4) Additional Deviations from Medical Board regulation**

15

16 CU comment:

17

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

23

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

29

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

40

41 BPM response:

42

43 These comments and recommendations were appreciated but rejected because there  
44 are no similar requirements in the MBC regulation.

45

46 Stating that "Complaints about care may be submitted to the MBC" would not be  
47 consistent with the MBC Notice to Consumers for MDs, which includes no such  
48 statement. BPM believes the proposed Notice adequately conveys that MBC is the



1 place to go to for filing complaints.  
2  
3

4 **(5) Need for Regulatory Change**  
5

6 COA comment:  
7

8 In our opinion, these changes would even more confusing to the public and  
9 would urge the Board to reconsider the need for this regulatory change.  
10

11 BPM response:  
12

13 This comment, recommendation and objection was rejected. The regulation is required  
14 by B&P Code Section 138 and will ensure widespread dissemination of the proper toll-  
15 free telephone number to call for filing complaints.  
16  
17

18 **Comments on Modified Text and BPM Responses**  
19

20 As indicated above, the BPM on February 18, 2010 made two amendments to the  
21 proposed regulation prior to its adoption. Specifically, it deleted “the board” in  
22 paragraphs (a) and (b)(2) of the proposed language and inserted in lieu thereof “the  
23 California Board of Podiatric Medicine.”  
24

25 BPM appreciates the comments from the three organizations that responded to the  
26 invitation of additional public comment on the proposed modifications, and notes that  
27 CPIL changed its position to “Support If Amended”:  
28

- 29 • Center for Public Interest Law (CPIL)
- 30 • Consumers Union (CU)
- 31 • Medical Board of California (MBC)  
32

33 BPM respectfully rejects all of these comments, recommendations and objections, and  
34 will respond comprehensively, apologizing for some duplication of what was presented  
35 above as the additional comments are similar to those submitted earlier.  
36  
37

38 CPIL comment:  
39

40 In both our oral and our written testimony, however, we urged the Board to  
41 change the language of the sign that doctors of podiatric medicine are  
42 required to post in order to educate patients where to go if they have a  
43 question or complaint (as was the intent of Business and Professions Code  
44 section 138, which the regulation is intended to implement). Perhaps we  
45 were unclear. In our view, the language of the sign should read as follows:  
46  
47  
48

1 NOTICE TO CONSUMERS  
2 Doctors of Podiatric Medicine are licensed and regulated  
3 by the California Board of Podiatric Medicine  
4 (800) 633-2322  
5 www.bpm.ca.gov  
6

7 BPM response:  
8

- 9 • This proposed sign, different from the options initially suggested by CPIL would not  
10 “educate patients where to go if they have a question or complaint” as well as the  
11 proposed regulation.  
12 • Not only are consumer verifications and complaints on DPMs handled by the Medical  
13 Board, but that is what patients assume.  
14 • Almost all consumers contact the Medical Board for DPM verifications and  
15 complaints using the MBC 800 number.  
16 • BPM is part of the MBC and MBC assesses BPM’s annual budget for these umbrella  
17 shared MBC services.  
18 • BPM’s staff office is not equipped to handle these calls and would have to transfer  
19 them to MBC, causing run-around and confusion.  
20 • Were the sign to say BPM, instead of MBC, consumers could be confused by calling  
21 the 800 number, which is answered by **“You have reached the Medical Board of  
22 California.”**  
23 • BPM drafted the sign to be as clear as possible for consumers. Listing BPM’s  
24 website is necessary because MBC, although it does DPM verifications  
25 telephonically, does not provide a ready online link for DPM verifications.  
26 • The BPM website has not and will not cause confusion because each page clearly  
27 indicates that BPM is part of the MBC, and that both are part of the DCA.  
28 • There is no history of this causing confusion for consumers.  
29  
30

31 CPIL comment:  
32

33 With all due respect, the modified language of the proposed is unclear and  
34 internally inconsistent. It does not make sense to direct a “licensee” who is  
35 “licensed and regulated by the California Board of Podiatric Medicine” to  
36 post a sign telling patients that the same licensee is “licensed and  
37 regulated by the Medical Board of California.”  
38

39 BPM response:  
40

- 41 • The modified language is neither unclear nor inconsistent. BPM is part of the MBC,  
42 and under its jurisdiction by law.  
43 • Licensees are well aware of this.  
44 • Consumers generally assume doctors are licensed by MBC, without differentiating  
45 between MDs and DPMs, which is in fact true.  
46 • It is also true that MBC is the proper agency to call for these consumer services.  
47 • It makes sense to direct consumers to the umbrella agency that takes and services

- 1 consumer calls.
- 2 • Consumers will be looking at a sign that is perfectly clear to them
  - 3 • It is a simple sign indicating the correct, direct contacts without having to be
  - 4 transferred and referred, avoiding the consumer confusion that would be caused by
  - 5 any of the proposed variations
  - 6 • The sign is consistent with other signs, i.e., those for MDs, that patients will be see
  - 7 often in the same settings.
  - 8 • This is proper implementation B&P Code Section 138, which aims to aid consumers,
  - 9 who will be noting graphic contact information on a posted sign

10

11 CPIL comment:

12

13 Again, we understand that BPM is “within the jurisdiction” of the Medical  
14 Board under Business and Professions Code section 2460; that DPMs are  
15 subject to the enforcement provisions of the Medical Practice Act; and that  
16 MBC technically (and ministerially) issues licenses to DPMs upon the  
17 recommendation of BPM (sections 2486 and 2488). However, MBC does  
18 not “regulate” DPMs. BPM regulates DPMs. BPM screens all applications  
19 for licensure to ensure that applicants have met its unique criteria for  
20 licensure (including two years of approved postgraduate training, a  
21 requirement that MBC does not have and that BPM – not MBC –  
22 sponsored in legislation). BPM autonomously adopts regulations setting  
23 standards for the practice of podiatric medicine in California (including its  
24 unique continuing competence requirement, which MBC lacks). And BPM  
25 – not MBC – decides which DPMs must be disciplined (and the extent of  
26 discipline) to protect patients. It is simply not accurate to say that MBC  
27 regulates DPMs.

28

29 BPM response:

30

- 31 • BPM is part of the MBC by law
- 32 • DPM licensing and regulation has always been an MBC function, even before
- 33 BPM was created as a sub-unit within it by law
- 34 • BPM is under MBC’s jurisdiction by law.
- 35 • It is under MBC’s authority that licenses are issued by MBC by law.
- 36 • Some licensing functions are handled by BPM staff while enforcement,
- 37 consumer services and some licensing functions are handled by MBC staff
- 38 • Consumer complaints and verifications of doctor credentials and disciplinary
- 39 history, the two major reasons for the Notice to Consumers, are handled
- 40 directly by MBC
- 41 • BPM staff services, under law, are under the jurisdiction of and subject to
- 42 review by MBC
- 43 • MBC could exercise review any time it chose, as it did in January 1992 by
- 44 creating an MBC “Non-MD Postgraduate Training Committee” to review
- 45 podiatric medical education programs, which resulted in “General
- 46 REQUIREMENTS that the committee would recommend to the Medical Board”
- 47 [capitals in original, *Final Report of Non-MD Postgraduate Training Committee,*

1 February 18, 1994]

- 2 • MBC's authority is by law, not a mere technicality, no matter to what extent
- 3 many day-to-day licensing functions are handled by BPM staff
- 4 • That DPM licenses are issued routinely does not mean this is merely
- 5 "ministerially," in the sense that MBC is "serving as a minister, or agent;
- 6 subordinate" or that this is "carried out in a prescribed manner not allowing for .
- 7 . . . discretion." [*Webster's New World Dictionary*]
- 8 • BPM self-exercises some functions as a unit of the MBC, but this does not
- 9 mean that MBC is subordinate to BPM
- 10 • That BPM does not act in a subordinate manner to MBC on a day-to-day basis
- 11 does not negate that it is functioning under the jurisdiction of MBC as stated by
- 12 law and that it is part of MBC
- 13 • That the MD and DPM licensing requirements are somewhat different does not
- 14 negate this
- 15 • That BPM has sponsored legislation does not negate this
- 16 • That BPM now has its own rulemaking authority does not negate this
- 17 • It is not inaccurate to say that MBC licenses and regulates DPMs because
- 18 BPM is part of MBC, under its jurisdiction, and in fact many of the services are
- 19 performed by MBC staff (including those involving direct contact with
- 20 consumers).

21  
22 CPIL comment:

23  
24 We have no objection to the alternative formulations that we suggested in  
25 our February 15 letter ("Doctors of Podiatric Medicine are licensed and  
26 regulated by the Board of Podiatric Medicine, part of the Medical Board of  
27 California" or "Doctors of Podiatric Medicine are licensed by the Medical  
28 Board of California and regulated by the Board of Podiatric Medicine").  
29 However, the language on page 1 of this letter seems the most clear and  
30 concise. And it is consistent with BPM's own description of itself in various  
31 "BPM E-Updates" that are posted on BPM's Web site:

- 32
- 33 • "BPM is the Department of Consumer Affairs unit that licenses
- 34 DPMs under the State Medical Practice Act" (October 2005)
- 35
- 36 • The Board of Podiatric Medicine (BPM) is the unit of the Medical
- 37 Board of California (MBC), Department of Consumer Affairs, which
- 38 administers licensing of DPMs under the State Medical Practice Act"
- 39 (February 2008; September 2004; March 2004)
- 40 • "BPM is the Department of Consumer Affairs (DCA) unit that
- 41 administers licensing of DPMs under the State Medical Practice Act"
- 42 (August 2006; August 2005).

43  
44 BPM response:

- 45
- 46 • BPM responded above to CPIL's original formulations
- 47 • Compared to BPM's proposed Notice, they like CPIL's current formulation are less

- 1 clear and concise for consumers
- 2 • BPM’s proposed Notice to Consumers is a notice *for* consumers
  - 3 • DCA and MBC are part of BPM letterheads including pages on the BPM website
  - 4 • Sometimes we will state BPM is a “unit of the Medical Board of California” and
  - 5 sometimes we will not, depending on the context, purpose and need, but that does
  - 6 not alter the law, organizational structure, or which offices and phone numbers
  - 7 handle consumer services
  - 8 • The purpose of the Notice to Consumers is to simply, clearly, without unnecessary
  - 9 complicating verbiage, inform consumers of the agency and number to call for
  - 10 verifications and complaints without having to be transferred from one office to
  - 11 another

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14 CPIL comment:

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16 In short, BPM is the regulator of doctors of podiatric medicine in the State of  
17 California. BPM (as the ultimate regulator of DPMs under its unique statutes and  
18 its disciplinary decisions) should be specifically mentioned in the required notice  
19 under section 138.

20

21 BPM response:

22

- 23 • Delegations of authority run from the Governor and Legislature to Agencies,
- 24 Departments, Boards
- 25 • BPM is a board within another board
- 26 • Created out of and “within the jurisdiction of the Medical Board of California” [B&P
- 27 Section 2460] does not suggest that BPM is the “ultimate regulator”
- 28 • Even much of the day-to-day regulation is performed directly by MBC personnel

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31 CU comments:

32

33 CU filed additional comments, some of which were also made by CPIL (Responses to  
34 these are made above).

35

36 The language of the required disclosure notice should instead identify the  
37 BPM as being the primary regulator of DPMs in California. While the BPM  
38 is part of the MBC, the BPM is the primary regulator of DPMs in this State.  
39 The Medical Board of California issues licenses and handles complaints for  
40 the BPM only in a ministerial capacity.

41

42 BPM response:

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- 44 • The proposed Notice to Consumers is designed to be an easy reference for
- 45 consumers as to who to call and where to go for direct assistance with verifications
- 46 and complaints
- 47 • The Notice is not designed to differentiate BPM from MBC or to explore and explain

- 1 their relationship
- 2 • That is of limited interest to consumers and would cause confusion
  - 3 • The Notice is not attempting to identify a “primary regulator,” however that may be
  - 4 interpreted
  - 5 • “Ministerial capacity,” as noted above, is not true in law, fact or practice

6  
7

8 CU comment:

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10 The BPM screens applicants to ensure they meet BPM-specific  
11 requirements for licensure, and the BPM is responsible for all enforcement  
12 and disciplinary actions against DPMs (Business and Professions Code  
13 Sections 2497 & 2497.5).

14

15 BPM response:

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- 17 • It is MBC Central Complaint Unit staff that consumers contact and interface with
- 18 to file and track the status of their complaints
- 19 • The BPM Board and Administrative Law Judges do make decisions under
- 20 Sections 2497 and 2497.5 but consumers typically learn of those decisions from
- 21 the MBC Central Complaints, Discipline Coordination and Licensing Verifications
- 22 units
- 23 • MBC Verifications uses the same MBC 800 number called for filing complaints
- 24 • The purpose of the Notice is not to explain who does what under whose authority
- 25 within a complex organizational and regulatory scheme but to simply and clearly
- 26 indicate who to call in a manner allowing patients to quickly memorize or jot it
- 27 down on a piece of paper

28

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30 CU comment:

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32 The BPM autonomously regulates DPMs by issuing regulations affecting  
33 the delivery of podiatric medical care, including continuing competence  
34 requirements (Section 1399.669).

35

36 BPM response:

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- 38 • BPM does not operate autonomously.
- 39 • BPM does not issue regulations but proposes them within an approval system

40

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42 CU comment:

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44 Consumers of podiatric care would be better informed to know that the  
45 Board of Podiatric Medicine is the group that is specifically concerned with  
46 the activities of licensed DPMs.

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1 BPM response:

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- The purpose of the Notice is to inform consumers who to call
- The purpose is not to explain BPM's roles, responsibilities and authorities in relation to those of MBC, about which consumers are generally not interested
- Summary and detailed information regarding organizational relationships and duties, for those interested, is provided on the BPM website indicated on the Notice

10 MBC comments:

11

12 MBC filed additional comments, some of which were also made by CPIL and CU  
13 (Responses to these are made above).

14

15 Regrettably, this modified text fails to reflect the comments offered by the  
16 Medical Board in our February 4, 2010 letter and may, in fact, further  
17 confuse members of the public.

18

19 The modified text in Section 1399.730 now reads that the "... licensee is  
20 licensed and regulated by the California Board of Podiatric Medicine."  
21 However, the very next sentence contradicts this; the notice which BPM is  
22 proposing includes a statement that "Doctors of Podiatric Medicine are  
23 licensed and regulated by the Medical Board of California." Therefore, we  
24 raise concern that the language fails to meet both the **clarity** and  
25 **consistency** standards as required by Section 11349 of the  
26 Administrative Procedure Act.

27

28 BPM response:

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- There is no history of consumers being confused about which office to call to file complaints against DPMs
- Almost all contact MBC directly, without having to be transferred or referred by BPM
- BPM's proposed Notice gives the correct contact information
- MBC's proposed alternative contact information is incorrect and would cause confusion
- Consumers would be confused if we direct them to BPM with an 800 number answered by an automated system stating "**You have reached the Medical Board of California.**"
- BPM is part of the MBC
- It is clearly stated in the law [B&P Section 2460] and BPM's regulations [1399.653. Definitions] for anyone studying the law and regulation texts that BPM is part of MBC
- The sign is for consumers
- The sign is for a patient's quick memory or notation in a medical office of who to call

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1 MBC comment:

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3 The Medical Board recognizes that pursuant to Section 2460 of the  
4 Business and Professions Code (B&P), the BPM is created within the  
5 jurisdiction of the Medical Board; further, per B&P Sections 2479 and  
6 2486, the Medical Board issues licenses to DPMs. But since both  
7 sections specify that the Medical Board acts upon “the recommendation  
8 of” BPM, this task is viewed purely as a ministerial function.

9

10 BPM response:

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- 12 • BPM is established “within the jurisdiction” of MBC.
- 13 • MBC staff services BPM programs, but BPM is an agent of MBC, not *vice versa*.
- 14 • If MBC does not always emphasize responsibility for DPMs or perform BPM  
15 oversight, it can and has when it wishes (e.g., its Non-MD Postgraduate Training  
16 Committee in the 1990s)
- 17 • MBC has not proposed or supported any change in the law establishing its  
18 jurisdiction
- 19 • The law states BPM is making “recommendations,” which are not dictates MBC must  
20 implement “purely as a ministerial function” as a subordinate
- 21 • Such tasks may sometimes be “viewed purely as a ministerial function” but that does  
22 not change the law or MBC’s organizational management options
- 23 • MBC is not a physicians’ organization and BPM is not a podiatrists’ organization;  
24 MBC is a State agency that licenses and regulates MDs, DPMs and others
- 25 • BPM was established by law within MBC’s jurisdiction to manage elements of the  
26 DPM program formerly performed by MBC prior to its having a distinct podiatric  
27 medical unit, but this program is still part of MBC

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30 MBC comment:

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32 Of greater importance are B&P Sections 2497 and 2497.5, which strictly  
33 place all enforcement and disciplinary actions against DPMs solely within  
34 the jurisdiction of the BPM. Consumers will be misled by references to the  
35 Medical Board.

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38 BPM response:

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- 40 • A similar argument was made by CU, and BPM addressed it above.

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1 MBC comment:

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The Medical Board respectfully suggests that the following amendment will address the concerns shared in our previous letter and will remove the confusion created by the modified text . . .

NOTICE TO CONSUMERS

Doctors of Podiatric Medicine are licensed and regulated  
by the ~~Medical Board of California~~ Board of Podiatric Medicine  
(800) 633-2322  
www.bpm.ca.gov

BPM response:

- Neither the original nor modified text has caused any confusion among consumers, or the commenting organizations
- The Medical Board verifications and central complaints number is the correct number to call
- It is the number consumers call now
- Changing the sign to tell consumers to call BPM using an MBC phone number answered **“You have reached the Medical Board of California”** is not in the public interest