

TITLE 16. BOARD OF PODIATRIC MEDICINE

NOTICE IS HEREBY GIVEN that the Board of Podiatric Medicine (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Hotel Adagio, 550 Geary Street, San Francisco, CA 94102, Siena Room, at 9:00 A.M., on June 5, 2009. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Mischa Matsunami in this Notice, must be received by the board at its office not later than 5:00 p.m. on June 4, 2009 or must be received by the board at the hearing. The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2470 of the Business and Professions Code, and to implement, interpret or make specific Sections 144, 480, 2222, 2229, 2236, and 2497 of said Code, the Board of Podiatric Medicine is considering changes to Division 13.9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Article 12 (consisting of sections 1399.720, 1399.721, 1399.722, 1399.723, 1399.724, and 1399.725).

This proposed rulemaking pertains to the mandatory submission of fingerprints to the Department of Justice (DOJ) for a state and federal level criminal offender record information search.

Business and Professions Code section 144 requires an applicant to furnish to specified agencies, including the Board of Podiatric Medicine, a full set of fingerprints for the purpose of conducting criminal history record checks. Additionally, this section allows the board to obtain and receive criminal history information from the DOJ and the United States Federal Bureau of Investigation (FBI).

The proposed regulations would require all board licensees for whom an electronic record of his or her fingerprints does not exist in the DOJ's criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ.

Specifically, the proposed regulations would:

- require all applicants to furnish a full set of fingerprints pursuant to Business and Professions Code section 144.

- require all licensees who have not previously submitted fingerprints to the DOJ or for whom an electronic record of the submission of the fingerprints does not exist with DOJ, to complete a state and federal level criminal offender record information search conducted through the DOJ before his or her license renewal date.
- exempts from the requirements of this proposed regulation licensees who are disabled, renewed in an inactive or retired status, or actively serving in the military outside the United States.
- requires licensees to retain for at least two years from renewal date a receipt showing the electronic transmission of his or her fingerprints to the DOJ and that the licensee's fingerprints were taken.
- requires licensees renewing his or her license to disclose any of the following events which occurred in the prior renewal cycle: (1) criminal convictions except for traffic infractions, and (2) disciplinary actions taken against his or her license.
- specify that no license shall be issued or renewed unless (1) fingerprints have been submitted pursuant to the requirements of Sections 1399.721 or 1399.722, and (2) licensee has reported on the existence of any criminal convictions or disciplinary actions pursuant to Section 1399.724.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Requires Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The current processing fees associated with LiveScan fingerprinting are \$32.00 for the DOJ and \$24.00 for the FBI.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulations would not affect small businesses because the regulations relate to fingerprinting and disclosure requirements of individual licensees.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Podiatric Medicine at 2005 Evergreen Street, Suite 1300, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Mischa Matsunami
Address: 2005 Evergreen Street, Suite 1300
Sacramento, California 95815
Telephone No.: (916) 263-2647
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E-Mail Address: mischa_matsunami@dca.ca.gov

The backup contact person is:

Name: Jim Rathlesberger
Address: 2005 Evergreen Street, Suite 1300
Sacramento, California 95815
Telephone No.: (916) 263-2647
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E-Mail Address: Jim_Rathlesberger@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bpm.ca.gov/lawsregs/index.shtml

CALIFORNIA BOARD OF PODIATRIC MEDICINE

INITIAL STATEMENT OF REASONS

Hearing Date: June 5, 2009

Subject Matter of Proposed Regulations: Fingerprint Requirements

Sections Affected: 16 CCR §§ 1399.720, 1399.721, 1399.722, 1399.723, 1399.724, and 1399.725

Specific Purpose

Adopt Section 1399.720

The proposed regulation would provide a statement of the board's policy to afford maximum protection to consumers and the public by ensuring that its licensees provide the board with information of any criminal convictions which may have occurred prior to application for initial licensure or renewal of license.

Adopt Section 1399.721

This section would specify that the board shall collect criminal history information from an applicant and require that he or she furnish a full set of fingerprints pursuant to Business and Professions Code section 144.

Adopt Section 1399.722

The proposed regulation would specify that licensees who were initially licensed prior to January 1, 1964, and licensees, regardless of the date of initial licensure, for whom an electronic record of the submission of fingerprints no longer exists, shall furnish to the Department of Justice (DOJ) a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search.

Adopt Section 1399.723

This section would specify that the licensee is responsible for (1) paying any cost for furnishing the fingerprint and conducting searches, (2) certifying on the renewal form whether his or her fingerprints have been submitted to DOJ, (3) the requirement of this section is waived for disabled, inactive or retired, or serving in active duty in the US military.

Adopt Section 1399.724

This section would require licensees to disclose criminal convictions and disciplinary actions taken against his or her license which occurred in the prior renewal cycle.

Adopt Section 1399.725

This section would specify that no license shall be issued or renewed unless fingerprints have been submitted and that no license shall be renewed unless the licensee has reported on the existence of criminal convictions or disciplinary actions.

Factual Basis

This proposed rulemaking pertains to the mandatory submission of fingerprints to the Department of Justice (DOJ) for a state and federal level criminal offender record information search.

Business and Professions Code section 144 requires an applicant to furnish to specified agencies, including the Board of Podiatric Medicine, a full set of fingerprints for the purpose of conducting criminal history record checks. Additionally, this section allows the board to obtain and receive criminal history information from the DOJ and the United States Federal Bureau of Investigation (FBI).

The board began requiring applicants for licensure to submit rolled fingerprints on paper cards as of January 1, 1964 for the purpose of conducting criminal history background checks through the DOJ and FBI. Since July 1, 2005, all applicants located in California have been required to submit their prints via Live Scan. Individuals licensed prior to 1964 do not generate a subsequent arrest notification by the DOJ and therefore the board is not notified of arrests and/or criminal convictions. Most of those licensed prior to July 1, 2005, when Live Scan was required, were not entered into the DOJ electronic database and may not generate subsequent arrest notification on a timely basis. It is necessary for the board to have subsequent arrest notices in order to protect the public by taking disciplinary action as may be appropriate.

This proposed rulemaking is necessary to ensure that all of the board's licensees have fingerprints entered into the DOJ electronic database so that the board is assured of receiving subsequent arrest notifications on a timely basis in order to protect the public.

Underlying Data

None

Business Impact

This regulation will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

BOARD OF PODIATRIC MEDICINE

PROPOSED LANGUAGE

Add Article 12 to Division 13.9, Title 16, California Code of Regulations

ARTICLE 12

§ 1399.720. Statement of Policy.

It is the policy of the Board of Podiatric Medicine to afford maximum protection to consumers and the public of the State of California by insuring that its licensees provide it with information of any criminal convictions which may have occurred prior to application for initial licensure or renewal thereof.

NOTE: Authority cited: Section 2470, Business and Professions Code.
Reference: Section 144, 480, 2222, 2229, 2236 and 2497, Business and Professions Code.

§ 1399.721. Initial Licensure.

The Board shall collect criminal history information from an applicant and require that he or she furnish a full set of fingerprints pursuant to Business and Professions Code Section 144.

NOTE: Authority cited: Section 2470, Business and Professions Code.
Reference: Section 144, Business and Professions Code.

§ 1399.722. Renewal of License.

The following categories of licensees shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search.

(a) Any licensee who was initially licensed prior to **January 1, 1964**.

(b) Any licensee, regardless of the date of initial licensure, for whom an electronic record of the submission of fingerprints no longer exists.

NOTE: Authority cited: Section 2470, Business and Professions Code.
Reference: Section 144, 480, 2222, 2229, 2236 and 2497, Business and Professions Code.

§ 1399.723. Procedures.

(a) The licensee shall pay any cost for furnishing the fingerprints and conducting the searches.

(b) The licensee shall certify on the renewal form whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

(c) This requirement is waived if the licensee is disabled, renewed in an inactive or retired status or serving on active duty in the Armed Forces of the United States outside the United States.

(d) A licensee shall retain for at least two years from his or her renewal date a receipt showing:

(1) The electronic transmission of his or her fingerprints to the Department of Justice; or

(2) That the licensee's fingerprints were taken.

NOTE: Authority cited: Section 2470, Business and Professions Code.
Reference: Section 144, 480, 2222, 2229, 2236 and 2497, Business and Professions Code.

§1399.724. Renewal Reporting Requirements.

A licensee renewing his or her license shall disclose any of the following events which occurred in the prior renewal cycle.

(a) Criminal convictions except for traffic infractions; and

(b) Disciplinary actions taken against his or her license.

NOTE: Authority cited: Section 2470, Business and Professions Code.
Reference: Section 144, 480, 2222, 2229, 2236 and 2497, Business and Professions Code.

1399.725 Conditions.

(a) No license shall be issued or renewed unless fingerprints have been submitted pursuant to the requirements of Sections 1399.721 or 1399.722.

(b) No license shall be renewed unless the licensee has reported on the existence of any criminal convictions or disciplinary actions pursuant to Section 1399.724.

NOTE: Authority cited: Section 2470, Business and Professions Code.
Reference: Section 144, 480, 2222, 2229, 2236 and 2497, Business and Professions Code.