

RESPIRATORY CARE BOARD OF CALIFORNIA

Division 13.6 Respiratory Care Board of California

(Notice published January 22, 2021)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Respiratory Care Board of California (Board) proposes to take the action to amend sections 1399.326, 1399.329 of Article 2 and 1399.374 of Article 7 of Division 13.6 of Title 16 of the California Code of Regulations (CCR) regarding Driving Record, Handling of Military Applications, and the Disciplinary Guidelines, as described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Persons" in this Notice.

WRITTEN COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Persons in this Notice, must be received by the Board at its office not later than 5:00 p.m. on Monday, March 8, 2021, or must be received by the Board at the hearing, should one be scheduled.

AVAILABILITY OF MODIFICATIONS

The Board, upon its own motion or at the request 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. Except for technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the persons designated in this Notice as Contact Persons 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 Business and Professions Code (BPC) section 3722 to implement, interpret or make specific BPC sections 141, 3718, 3730, and 3732, the Board is considering changes to Articles 2 and 7 of Division 13.6 of Title 16 of the CCR.

INFORMATIVE DIGEST

The Board licenses respiratory care practitioners, who are health care practitioners that provide health care services. Existing regulation 16 CCR 1399.326 required the Board to obtain a review of the driving history of all applicants from the California Department of Motor Vehicles (DMV), unnecessarily slowing down the review process. This proposal seeks to eliminate a barrier to licensure by rescinding the requirement that all applicants provide a DMV printout, and instead only require the driving history when considering an application from an individual with a significant alcohol history. Existing regulation 16 CCR 1399.329 only addressed the Board prorating renewal fees and the number of CE hours required for discharged members of the military or the California National Guard seeking to renew their license. Several pieces of legislation passed within the last seven (7) years¹ provide for special handling for military personnel and their spouses, and the Board seeks to amend 16 CCR 1399.329 to make clear to the public the special handling available. The Board seeks to amend 16 CCR 1399.374 to incorporate changes to the Board's laws related to the respiratory care scope of practice being further defined, to incorporate a new cause for discipline for providing false statements to a Board investigator or probation monitor, as well as to update enforcement processes and goals established as part of its most recent Strategic Plan.

Anticipated Benefits of the Proposed Regulation:

The proposed regulatory action will streamline the review of applications by removing, where appropriate, a previously required applicant driving history. The proposed regulatory action will place applicants and licensees on notice of how the Board provides special handling for applications and renewals of military personnel and spouses of military personnel and will speed up processing for such persons. The proposed regulatory action will update the Board's Disciplinary Guidelines, supporting the Board's enforcement goals and providing clarity and guidance to applicants and licensees.

With the proposed regulatory action, the Board responds to new laws and recommendations made to improve processing of applications and renewals and seeks to provide respiratory care practitioners with updated guidance on how disciplinary matters are handled. These regulatory proposals seek to improve the Board's ability to protect consumers while better serving respiratory care applicants and practitioners.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

During the process of developing these amendments, the Board conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

¹ Senate Bill 525 (Nielsen, Chapter 247, Statutes of 2015) and Assembly Bill 923 (Steinorth, Chapter 253, Statutes of 2016)

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

1. Mandate on local agencies and school districts: None
2. Costs or savings to any state agencies: This proposal does not change the fine amounts for violations but provides a more accurate overview of the Committee's processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the Board, the Office of Attorney General, and the Administrative Law Judges by outlining relevant and transparent standards directly related to violations outlined in law.

The proposed regulations are not anticipated to result in additional workload or costs to the Board.

3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None
4. Other nondiscretionary costs or savings imposed on local agencies: None
5. Costs or savings in federal funding to the state: None
6. Cost impacts on representative private person or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
7. Statewide adverse economic impact directly affecting businesses and individuals: None
8. Significant effect on housing costs: None

Business Impact:

The regulatory amendments will not have a significant statewide adverse economic impact directly affecting businesses. This initial determination is based on the following facts:

The Board has approximately 23,600 licensees for the current fiscal year. During the 2016/2017 fiscal year the Board issued 1,105 licenses, and in fiscal year 2017/2018 the Board issued 1,116 licenses. The proposed regulations will slightly streamline aspects of application processing and are not expected to result in an increase in applications. Updating the Disciplinary Guidelines improves the Board's service to the public and provides greater clarity to licensees, but this is unlikely to have any impact on businesses, as the update merely clarifies existing procedures and does not introduce new procedures.

Effect on Small Business:

This regulation will not have a significant statewide effect on small businesses because the proposal is not of sufficient magnitude to expand businesses or impact businesses, as discussed above. This initial determination is based on the facts set out in the paragraph above.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses

The Board has determined that this regulatory proposal will not have any impact on the creation or elimination of jobs or create new businesses or eliminate existing businesses, or expand existing businesses within the State of California because the proposal does not change the regulations in a way that would have the impact of creating, eliminating, or expanding businesses.

Effect on Small Business

The Board has determined that the proposed regulations will not significantly affect small businesses in the State of California. These regulations only impact RCP applicants, RCP applicants and licensees who are military personnel or spouses of military personnel, and respiratory care practitioners who violate the Respiratory Care Act.

Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

This regulatory proposal will benefit the health and welfare of California residents by minimally decreasing the time to review applications, by making clear to military personnel and spouses of military personnel their right to get special handling of applications and renewals, and by updating the Disciplinary Guidelines to provide clarity about the disciplinary process to respiratory care practitioners. This proposed rulemaking is not anticipated to have an impact on worker safety or the State's environment as it does not involve worker safety or environmental issues.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative the Board considered, or that has otherwise been identified and brought to its attention, would either be more effective in carrying out the purpose for which the regulatory amendments are proposed or would be as effective and less burdensome to affected private persons than the regulatory amendments described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested persons may present written statements relevant to the above determinations to the Board at the address indicated under Contact Persons.

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 regulation, and of the initial statement of reasons, including any document incorporated by reference, and all of the information upon which the proposal is based, may be obtained upon request to the Board at 3750 Rosin Court, Suite 100, Sacramento, CA 95834 or on the Board's website at www.rcb.ca.gov.

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 persons 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, on the following page.

CONTACT PERSONS

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

Name: Christine Molina
Address: 3750 Rosin Court, Suite 100
Sacramento, CA 95834
Telephone No.: (916) 999-2190
Fax No.: (916) 263-7311
E-Mail Address: rcbinfo@dca.ca.gov

The backup contact person is:

Name: Stephanie Nunez
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Website Access: Materials regarding this proposal can be found at <https://rcb.ca.gov/enforcement/lawsregs.shtml>.