

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISIONS 13.3 AND 13.4
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
AND HEARING AID DISPENSERS BOARD

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Uniform Standards

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is proposing to take the action 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 Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than Tuesday, November 15, 2022, by 5:00 p.m.**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 2531.06 and 2531.95 of the Business and Professions Code (BPC) and Sections 11400.20 and 11425.50(e) of the Government Code, and to implement, interpret, or make specific BPC Sections 315, 315.2, and 315.4, the Board is considering amending sections 1399.102 and 1399.131, adding section 1399.131.1 to Division 13.3, and amending sections 1399.155 and 1399.155.1 of Division 13.4, of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

This proposed regulation will enhance the Board’s mission to protect the public by adopting consistent standards to apply when dealing with substance-abusing licensees. The Board is a state agency vested with the authority to regulate the practices of speech-language pathology, audiology, and hearing aid dispensing under BPC Section 2530.1. The Board’s mandate and its mission is to protect the public while exercising its licensing, regulatory, and disciplinary functions (BPC Section 2531.02). The Board regulates approximately 35,000 licenses for speech-language pathologists, speech-language pathology assistants, speech-language pathology aides, audiologists, dispensing

audiologists, audiology aides, hearing aid dispensers, hearing aid dispenser trainees, and temporary hearing aid dispenser licenses. To protect the public, the Board is authorized to discipline licensees who may endanger the health, welfare, and safety of the public (BCP Section 2533).

Existing law, under BCP Sections 2531.06 and 2531.95, authorizes the Board to adopt or repeal regulations to execute any provisions of the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act. The Board intends to use its authority to amend and add regulations regarding DCA's Uniform Standards for the discipline of substance-abusing licensees.

Existing law, under BPC Section 315, established the Substance Abuse Coordination Committee (Committee) within the Department of Consumer Affairs (DCA) and required the Committee to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program. This proposed regulation will add CCR sections 1399.131.1 and 1399.151.1 to incorporate the DCA's Uniform Standards by reference into regulations. This must be done in two separate divisions of title 16 of the CCR as a result of the merger of the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau of 2010.

Existing law, under BPC Section 315.2, specifies that a healing arts board within DCA is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. Furthermore, the cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings. This proposed regulation includes this provision from the DCA's Uniform Standards being incorporated by reference into regulations in this rulemaking.

Existing law, under BPC Section 315.4, authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards amended and authorized under BPC section 315. Furthermore, the cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings. This proposed regulation includes this provision from the DCA's Uniform Standards which is being incorporated by reference into regulations by this rulemaking.

Existing law, under Government Code Section 11400.20 authorizes an agency to amend regulations to govern an adjudicative proceeding. This proposed regulation will amend CCR sections 1399.131 and 1399.155 to permit the Board to use the DCA's Uniform Standards in reaching a decision on disciplinary actions for substance-abusing licensees.

Existing law, under Government Code Section 11425.50(e) specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, and order standard of general application or other rule unless it has been adopted as a regulation. This proposed regulation will amend CCR sections 1399.131 and 1399.155 to permit the Board to use the DCA's Uniform Standards in reaching a decision on disciplinary actions for substance-abusing licensees.

Existing regulations, under CCR Sections 1399.131 and 1399.151, specify that the Board shall consider the disciplinary guidelines in reaching a decision on a disciplinary action under the Administrative Procedures Act. This proposed regulation will amend these sections and add sections 1399.131.1 and 1399.155.1 to require the Board to apply the DCA's Uniform Standards in reaching a decision on disciplinary actions for substance-abusing licensees.

There is no existing federal regulation or statute comparable to this proposed regulation.

Substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient.

This regulatory proposal will incorporate by reference into regulation the DCA document entitled "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, March 2019" (Uniform Standards). Incorporating this document enhances the Board's mission to protect the public by providing the Board with consistent standards in dealing with substance-abusing licensees. The Board also seeks to make various technical, non-substantive, changes for the purpose of clarity, readability, and consistency.

The following is a summary of the proposed changes the Board seeks to make:

Amend Section 1399.102 of Article 1 of Division 13.3 of Title 16 of the CCR

This section is amended for technical, non-substantive changes and to add a new term to the list of definitions for the hearing aid dispenser regulations. These changes are for the purpose of clarity, readability, and consistency with regulations this Board has for the practices of speech-language pathology and audiology in Section 1399.150.2 of Article 1 of Division 13.4.

Amend Section 1399.131 of Article 6 of Division 13.3 of Title 16 of the CCR

This section is amended to add an exception to the disciplinary guidelines related to substance-abusing licensees in the practice of hearing aid dispensing. The added language specifies that the Uniform Standards will be used in reaching a decision under the Administrative Procedure Act on disciplinary actions for substance-abusing licensees regulated by the Board. This change is required by statute and will bring uniformity to the

discipline recommended by administrative law judges and imposed by the Board. It enables the Board to comply with its public protection mandate by ensuring licensees who have been identified as substance abusing are held to the same strict disciplinary standards and makes these strict standards available to licensees and the public by placing the Uniform Standards in regulation.

There are also technical, non-substantive changes for the purpose of clarity, readability, and consistency with regulations this Board has for the practice of speech-language pathology and audiology in Section 1399.155 of Article 6 of Division 13.4.

Add Section 1399.131.1 to Article 6 of Division 13.3 of Title 16 of the CCR

This section is added to incorporate by reference DCA's Uniform Standards and permit the Board to impose additional terms or conditions of probation that are not specified in the Uniform Standards. This increases public protection by ensuring the Board has consistent standards for disciplining substance-abusing licensees and all substance-abusing licensees are held to the same strict disciplinary standards. Giving the Board the ability to determine the probation terms and conditions based on the nature and severity of the licensee's violation further maintains the public safety while promoting the rehabilitation of the substance-abusing licensee. It would be unduly cumbersome, expensive, and otherwise impractical to publish the Uniform Standards twice within the California Code of Regulations. It is available on the Board's website and from the Board upon request.

Amend Section 1399.155 of Article 6 of Division 13.4 of Title 16 of the CCR

This section is amended to add an exception to the disciplinary guidelines related to substance-abusing licensees in the practices of speech-language pathology and audiology. The added language specifies that the Uniform Standards will be used in reaching a decision under the Administrative Procedure Act on disciplinary actions for substance-abusing licensees regulated by the Board. This change is required by statute and brings uniformity to the discipline recommended by administrative law judges and imposed by the Board. It enables the Board to comply with its public protection mandate by ensuring licensees who have been identified as substance abusing are held to the same strict disciplinary standards, and makes these strict standards available to licensees and the public by placing the Uniform Standards in regulation.

There are also technical, non-substantive changes for the purpose of clarity, readability, and consistency with regulations this Board has for the practice of speech-language pathology and audiology in Section 1399.131 of Article 6 of Division 13.3.

Amend Section 1399.155.1 of Article 6 of Division 13.4 of Title 16 of the CCR

This section is added to incorporate by reference DCA's Uniform Standards and permit the Board to impose additional terms or conditions of probation that are not specified in the Uniform Standards. This increases public protection by ensuring that along with consistent standards for disciplining substance-abusing licensees the Board retains the ability to determine the probation terms and conditions based on the nature and severity of the licensee's violation. This both maintains the public safety while promoting the rehabilitation of the substance-abusing licensee. It would be unduly cumbersome expensive, and otherwise impractical to publish the Uniform Standards twice within the California Code of Regulations. It is available on the Board's website and from the Board upon request.

Adoption of "Uniform Standards regarding Substance-Abusing Healing Arts Licensees, March 2019"

The "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, March 2019" will be incorporated by reference in section 1399.131.1 of Article 6 of Division 13.3 and section 1399.155.1 of Article 6 of Division 13.4. This is because the Board has two separate divisions of Title 16 of the California Code of Regulations, used for the licensees of the Board as of the result of the merger of the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau in 2010. The Board uses CCR Division 13.3 for hearing aid dispensers and CCR Division 13.4 for the speech-language pathologists and audiologists.

The Uniform Standards specify sixteen standards implemented by DCA to promote consistency in dealing with substance-abusing healing arts licensees and better protect the public from harm. Adopting the DCA Uniform Standards also ensure all substance-abusing licensees are held to the same disciplinary standard.

Anticipated Benefits of Proposal

This regulatory proposal will enhance the Board's mission to protect the public by adopting consistent standards to apply when dealing with substance-abusing licensees. These Uniform Standards will bring uniformity to the discipline recommended by administrative law judges and imposed by the Board. It enables the Board to comply with its public protection mandate by ensuring licensees who have been identified as substance abusing are held to the same strict disciplinary standards, and makes these strict standards available to licensees and the public by placing the Uniform Standards in regulation.

Consistency and Compatibility with Existing State Regulations

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

INCORPORATION BY REFERENCE:

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, March 2019

DISCLOSURES REGARDING THIS PROPOSED ACTION

The Board has made the following initial determinations:

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 Require Reimbursement: None

Significant Effect on Housing Costs: None

FISCAL IMPACT ESTIMATES

The Board does not anticipate an increase in workload or cost with the proposed regulatory action because the Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensee when drafting settlement or decision during the administrative disciplinary process.

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. This proposal provides a more accurate overview of the Board's disciplinary actions related to substance abusing licensees by outlining relevant and transparent standards directly related to violations prescribed in current law.

The regulations do not result in costs or savings in federal funds to the state.

BUSINESS IMPACT ESTIMATES

The Board has made the 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. This initial determination is based on the following facts:

- The Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.
- The Board historically has less than one (1) percent of its licensed population per year who faces disciplinary actions and are subject to drug testing as part of probation.

The Board's authority is over licensees and not over all businesses within the industries the Board regulates. The Board regulates over 35,000 licensees who provide services in various settings such as schools, medical, community-based facilities, and private practice. The Board only maintains data on business where hearing aid dispensers and dispensing audiologists are authorized to sell hearing aids in accordance with BPC sections 2538.33 and 2538.34. The Board does not maintain data relating to the number of businesses for other license types or the types of business (e.g., private, nonprofit, public, or small business) in which licensees are employed. As a result, the Board cannot provide any estimates for the total number or types of businesses that may be impacted.

Cost Impact 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.

The Board is not aware of any other economic costs that may occur. The Board is also not aware of any effect that the proposed regulatory action will have on housing cost or impact to local agencies or federal funding to the State.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS:

Impact on Jobs / Businesses

The Board has determined that:

This regulatory proposal will not create new businesses or jobs within the State of California because the regulation is related to licensees and public safety within the industries the Board regulates and not enhancing industry growth.

This regulatory proposal will not eliminate existing businesses or jobs within the State of California because the regulation is not a barrier to industry growth within the industries the Board regulates. The Board historically has less than one (1) percent of the licensed population per year who faces disciplinary actions and are subject to drug testing as part of probation. Under these historical conditions, the Board has seen growth in its licensed population.

This regulatory proposal will not affect the expansion of businesses currently doing businesses within the State of California because the regulation is related to licensees and public safety within the industries the Board regulates and not enhancing industry growth.

Anticipated Benefits of Proposal

This regulatory proposal benefits the health and welfare of California residents because the regulation protects consumers from receiving services from an unfit licensee and provides the Board with an effective and consistent standard to intervene quickly and discipline substance-abusing licensees.

This regulatory proposal benefits worker safety because the regulation protects the workplace from unfit licensees and provides the Board with an effective and consistent standard to intervene quickly and discipline substance-abusing licensees.

Benefits such as public safety, worker safety, and transparency are unquantifiable and cannot be easily measured or estimated but the Board expects that they will remain the same as the Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.

This regulatory proposal does not affect the State's environment because the regulation is related to licensees and public safety within the industries regulated by this Board and not the environment.

Business Reporting Requirements

The proposed regulatory action does not require businesses to file a report with the Board.

Effect on Small Business

The Board has made the initial determination that the proposed regulatory action would affect small business. This initial determination is based on the following facts:

- The Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.
- The Board historically has less than one (1) percent of its licensed population per year who faces disciplinary actions and are subject to drug testing as part of probation.

The Board's authority is over licensees and not over all businesses within the industries the Board regulates. The Board regulates over 35,000 licensees who provide services in various settings such as schools, medical, community-based facilities, and private practice. The Board only maintains data on business where hearing aid dispensers and dispensing audiologists are authorized to sell hearing aids in accordance with BPC sections 2538.33 and 2538.34. The Board does not maintain data relating to the number of businesses for other license types or the types of business (e.g., private, nonprofit, public, or small business) in which licensees are employed. As a result, the Board cannot provide any estimates for the total number of small businesses that may be impacted.

The Board is not aware of costs that small businesses may incur to comply with this regulation over its lifetime as the Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), 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 be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposal 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 person may submit comments to the Board in writing relevant to the above determinations at 1601 Response Road, Suite 260 Sacramento, CA 95815.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1601 Response Road, Suite 260 Sacramento, CA 95815.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, 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. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the 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.

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 PERSONS

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

Name: Maria Liranzo; Legislation, Regulations, and Budget Analyst
Address: Speech-Language Pathology and Audiology
and Hearing Aid Dispensers Board
1601 Response Road, Suite 260
Sacramento, CA 95815
Telephone No.: (916) 905-5441
E-Mail Address: SpeechandHearingRegulations@dca.ca.gov

The backup contact person is:

Name: Cherise Burns, Assistant Executive Officer
Address: Speech-Language Pathology and Audiology
and Hearing Aid Dispensers Board
1601 Response Road, Suite 260
Sacramento, CA 95815
Telephone No.: (916) 905-5454
E-Mail Address: SpeechandHearingRegulations@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at:

https://www.speechandhearing.ca.gov/board_activity/lawsregs/proposed_regulations.shtml