



MEMORANDUM

DATE	February 11, 2021
TO	Naturopathic Medicine Committee Board Members
FROM	Karen Halbo, Attorney III Legal Affairs Division, Department of Consumer Affairs
SUBJECT	Agenda Item #5: Proposed Amendments to Title 16, California Code of Regulations sections 4256, 4258, and 4259 (AB 2138 Implementation), Modified Text requested by OAL and sent out for 15-day notice in November 2020.

Background

At its March 5, 2019 meeting, the Naturopathic Medicine Committee (Committee) approved regulatory language to implement AB 2138 (Chiu, Chapter 995, Statutes of 2018). The regulatory proposal was sent out for public notice from March 13, 2020 to April 28, 2020. One public comment letter was received, and at its May 28, 2020 meeting, the Committee considered and rejected that comment. On August 31, 2020, the rulemaking was submitted to the Office of Administrative Law (OAL) for review.

During the OAL review, language and punctuation changes were made so that the proposed regulations better aligned with the AB 2138 regulations of other DCA boards, bureaus, and committees. These changes were deemed non-substantive. The OAL reviewer noted the Initial Statement of Reasons (ISOR) contained an incorrect reference to unprofessional conduct "as defined in Business and Professions Code section 2234." This section of the Business and Professions Code (BPC) defines "unprofessional conduct" in the practice of medicine. The Osteopathic Medical Board (OMB) regulations implementing AB 2138 specifically mention OMB's power to deny or discipline a licensee based on unprofessional conduct as defined in BPC section 2234. The OMB regulations were used as a template for the Committee's AB 2138 regulations.

While the Committee is a committee of the OMB (see BPC sections 2450.3 and 3612), it was determined the Committee's AB 2138 regulations would be clearer if the reference to the definition of "unprofessional conduct" in BPC section 2234 was changed to refer to BPC section 3662, within the Naturopathic Medicine Act. BPC section 3662 reads:

“It shall constitute unprofessional conduct for a naturopathic doctor to violate, attempt to violate, assist in the violation of, or conspire to violate, any provision or term of this chapter or any regulation adopted under it.”

Modified Text changing the BPC section defining unprofessional conduct and including the other non-substantive changes was sent out for public notice from November 10, 2020 to November 25, 2020 (see **Attachment A**). No public comments were received. Because the Modified Text included a substantive change to the Proposed Regulatory Text already approved by the Committee, the Committee must review and vote to adopt the Modified Text which makes the above-described substantive change.

Recommendation

The members should review the Modified Text sent out for 15-day notice in November. After review, the Committee may consider:

Option No. 1 (If the members agree with the proposed modifications): Vote to adopt the Modified Text as was sent out for 15-day public notice.

Option No. 2: (If the members disagree with the changes made in the Modified Text or wish to propose additional edits): Vote to reject the Modified Text and direct staff to make edits, and to send the newly Modified Text out for a 15-day public comment period.

In addition to either Option No.1 or Option No. 2, it is recommended that the Committee direct staff to take all steps necessary to complete the rulemaking process and authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and adopt the proposed regulation as described in the modified text notice.