

## MEMORANDUM

<b>DATE</b>	May 15, 2023
<b>TO</b>	Board Members California Board of Naturopathic Medicine
<b>FROM</b>	Raquel Oden, Analyst California Board of Naturopathic Medicine
<b>SUBJECT</b>	<b>Agenda Item 5.b.: Discussion and Possible Action to Initiate a Rulemaking to Adopt CCR, Title 16, Section 4201 (Delegation of Functions)</b>

### Background

Business and Professions Code section BPC section 3621(e) provides:

“The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and **perform the duties delegated by the board** and vested in the executive officer by this chapter.” (Emphasis added.)

The Board has adopted a few regulations in Division 40 of tile 16 of the California Code of Regulations (16 CCR) that specify the Executive Officer’s duties, including:

- (1) 16 CCR section 4208 (complaint disclosures),
- (2) 16 CCR section 4242 (issuance of citation and fines),
- (3) 16 CCR section 4246 (setting fine amounts),
- (4) 16 CCR section 4250 (contest of citations),
- (5) 16 CCR section 4252 (granting extensions of time for correction under orders of abatement), and,
- (6) 16 CCR section 4254 (issuance of citations for unlicensed activity).

However, the Board currently does not have a regulation that prescribes the overall day-to-day duties commonly assigned to Executive Officers or Executive Directors in this Department. According to Regulations Counsel, other boards within this Department have specified their Executive Officer’s duties in regulation. Examples include the following:

#### California State Board of Pharmacy (16 CCR § 1703):

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements

of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; set and calendar cases for hearing and perform other functions necessary to the business-like dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; the certification and delivery or mailing of copies of decisions under Section 11518 of said code; and issue summary suspension orders or notices of suspension under Section 4311 of the Business and Professions Code; make changes to its regulations without regulatory effect pursuant to Title 1, California Code of Regulations Section 100; and approve waivers pursuant to Section 4076.5(e) of the Business and Professions Code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Board of Behavioral Sciences (16 CCR § 1803):

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing, issue orders compelling an evaluation of a licensee's or registrant's physical or mental condition in accordance with Section 820 of the Business and Professions Code and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license or registration; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in his or her absence from the office of the board, the acting executive officer.

Dental Board of California (16 CCR § 1001):

- (a) It shall be the duty of the Board's executive officer to plan, direct and organize the work of the staff; attend Board meetings and hearings; consult with and make recommendations to the Board; dictate correspondence; attend committee meetings of various organizations and associations; assist in compiling examination material; attend examinations and assist in conducting the examinations; notify applicants of their success or failure on examinations; and prepare reports and direct and supervise the field investigators concerning enforcement of the Act.

(b) The power and discretion conferred by law upon the board to initiate, review and prosecute accusations and statements of issues pursuant to Sections 11500 through 11528 of the Government Code and to approve settlement agreements for the revocation, surrender or interim suspension of a license are hereby delegated to and conferred upon the board's executive officer or in the absence thereof, the assistant executive officer.

Consistent with the current day-to-day functions and job duties of your Executive Officer, and the commonly understood role of the Executive Officer, Regulations Counsel has drafted the attached proposal for your consideration and action.

### **Action Requested**

The Board should review the proposed regulatory text and consider whether they would support it as written or if there are suggested changes to the proposed text. After review, the staff requests that the Board consider one of the following motions:

**Motion A:** (The Board has no suggested changes for the proposed regulatory text.) Approve the proposed regulatory text for Section 4201 and submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR Section 4201.

**Motion B:** (The Board has suggested changes for the proposed regulatory text.) Approve the proposed regulatory text for Section 4201 as provided in the attachment, with the following changes. (Describe the proposed changes to the proposed text). In addition, submit this revised approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR Section 4201.

**Attachment:** Proposed Regulatory Text for Adoption of 16 CCR section 4201 in Division 40 of the Board's Regulations.