

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: August 16, 2022
 ATTENTION: Members, Medical Board of California
 SUBJECT: 2022 Sunset Report Legislative Proposals
 STAFF CONTACT: Aaron Bone, Chief of Legislation and Public Affairs

REQUESTED ACTION:

To provide direction and feedback to staff on new legislative proposals for possible inclusion in the Medical Board of California's (Board) 2022 Sunset Report.

Following the August 25-26, 2022, Board meeting, staff propose to continue researching and refining the proposals, as appropriate, and provide updated proposals for Board approval at the December 1-2, 2022, Board meeting.

Background:

At the November 2021 meeting, the Board approved multiple legislative proposals that were provided to the Legislature in a [January 2022 memo](#). Some of Board's proposals were introduced into legislation¹ and certain enforcement proposals were discussed during a [May 6, 2022, hearing](#) of the Senate Committee on Business, Professions, and Economic Development.

The Board is scheduled to undergo sunset review by the Legislature in 2023, which involves an evaluation of the Board's activities since its prior sunset review in 2021. The first key step for each board or bureau subject to sunset review is to issue a public report² that includes various data about their recent performance and narrative responses to questions posed by the Legislature.

2020 Sunset Report Legislative Proposals

A key component of a sunset report is the "New Issues" section, which allows the Board to make requests to the Legislature for statutory changes. The Board's 2020 report included numerous proposals, a few of which were enacted into law, including most significantly, restoring authority to recover investigatory and prosecution costs incurred with physician disciplinary action and a limited fee increase on applicants and licensees.

Board staff recommend including all proposals from the January memo that are not enacted into law into the 2022 sunset report.

¹ See [Assembly Bill 1767](#), [Assembly Bill 2060](#), and [Senate Bill 920](#).

² For reference, see the [Board's 2020 Sunset Report](#).

New Legislative Proposals for Board Consideration

Enforcement

Addressing Licensees Who Ask Patients to Rescind a Medical Records Release:

According to the Health Quality Investigations Unit (HQIU), some physicians under investigation have asked their patients to rescind their consent to release their medical records to HQIU investigators. Although the frequency of this is not tracked, HQIU staff have provided Board staff multiple examples when this occurred. Without quick access to medical records, a Board investigation can be delayed, likely increasing enforcement timeframes, and possibly increasing costs if legal action is required to pursue enforcement of a subpoena.

Pursuant to [Business and Professions Code \(BPC\) section 2220.7](#), a physician is prohibited from including in a civil settlement agreement with a patient or other party any provision that prohibits anyone from:

- Contacting or cooperating with the board.
- Filing a complaint with the board.
- Withdrawing a complaint previously filed with the board.

Further, [Penal Code section 136.1](#) states that it is a crime for anyone to knowingly and maliciously prevent or dissuade (or attempt to) any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

Apart from the above code sections, current law does not state that it is unprofessional conduct for a licensee or their representative to ask an individual to rescind a release for medical records or otherwise not cooperate with a Board investigation and prosecution.

Accordingly, staff recommend the Board direct staff to develop a legislative proposal to address these concerns for inclusion in the Board's draft 2022 Sunset Report for Board approval during the December 1-2 meeting.

Licensing

Additional Time to Sit for the Final Licensing Examination: SB 806 of 2021 reduced the amount of postgraduate training required to qualify for a physician and surgeon (P&S) license from 36 months to 12 months for graduates of a U.S./Canadian medical school and 24 months for graduates of an international medical school. Postgraduate Training License (PTL) holders are required to transition to a Physician's and Surgeon's (P&S) license no later than 15 or 27 months, depending upon where they completed medical school.

The Board has already begun hearing from PTL holders who graduated from a U.S./Canadian medical school and are facing difficulty scheduling, taking, and receiving their exam scores for the United States Medical Licensing Examination (USMLE) Step 3

(which is a requirement for a P&S license) before their PTL expires. Once a PTL expires, the individual must obtain a P&S license or cease practice. The number of residents impacted by this issue is expected to increase in the coming year, as the residents issued a PTL for 15 months this year try to schedule and pass the USMLE Step 3 and submit their exam scores to the Board before their PTL expires next year.

To help a PTL holder avoid an interruption to their postgraduate training, staff propose allowing them an additional 60-day extension to meet the USMLE Step 3 requirement. This will allow the PTL holder to continue training in a Board-approved program while taking the exam and waiting for the results. Therefore, staff propose the following amendments to BPC section 2065(f) (new language in underlined italics):

Upon review of supporting documentation, the board, in its discretion, may grant an extension beyond 15 months to a postgraduate training licensee who graduated from a medical school in the United States or Canada, or beyond 27 months to a postgraduate training licensee who graduated from a foreign medical school approved by the board pursuant to Section 2084 other than a Canadian medical school, to receive credit for the 12 months of required approved postgraduate training for graduates of medical schools in the United States and Canada and 24 months of required approved postgraduate training for graduates of foreign medical schools other than Canadian medical schools. Upon a request from the Board-approved postgraduate training program, the board, in its discretion, may grant an additional 60-day extension to successfully meet the written examination requirement.

Conforming Licensing Statutes to SB 806 Requirements: At their November 2021 meeting, the Board approved multiple “clean-up” proposals to address various technical matters following approval of SB 806. The following proposal is an additional clean-up suggestion.

Under the SB 806 changes, BPC section 2065(c) suggests that all PTL holders have up to 27 months to transition to a P&S license. That is, however, inconsistent with other statutes that clearly state the required amounts of postgraduate training required prior to licensure, as discussed above. The law also requires, in BPC section 2064.5(a), an individual to obtain their PTL within six months of starting their training.

Staff suggest updating BPC section 2065(c) to clarify that an individual must transition to a P&S license before their PTL expires, as follows (new language in underlined italics and language to be removed in ~~strikeout~~):

A graduate who has completed the first year of postgraduate training may, in an approved residency or fellowship, engage in the practice of medicine whenever and wherever required as part of that residency or fellowship, and may receive compensation for that practice. The resident or fellow shall qualify for, take, and pass the next succeeding written examination for licensure. If the resident or fellow fails to receive a license to practice medicine under this chapter ~~within 27 months from the commencement of the residency or fellowship~~ by the date their

postgraduate training license expires, except as otherwise allowed under subdivision (g) or (h) or under section 2064.5 subdivision (a), or if the board denies their application for licensure, all privileges and exemptions under this section shall automatically cease.

Clarifying the Names of Postgraduate Training Accrediting Organizations: There are accrediting agencies in different countries that share similar names as the ones accepted by the Board. Residents trained in these internationally accredited programs are sometime confused whether their training program meets the Board's requirements. For example, the Royal College of Physician's in the UK and ACGME International (ACGME-I) are accepted by other licensing bodies, but not the Board.

Therefore, staff recommend amending BPC section 2096(b) to clarify the names of the accrediting agencies recognized by the Board, as follows (new language in underlined italics):

The postgraduate training required by this section shall include at least four months of general medicine and shall be obtained in a postgraduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME) in the United States, the Royal College of Physicians and Surgeons of Canada (RCPSC) in Canada, or the College of Family Physicians of Canada (CFPC) in Canada.

Board Member Proposals

Board members who wish to suggest statutory proposals are encouraged to do so during the Board's August 25-26 meeting, if possible. Following discussion, staff request that the Board direct staff to further research and refine those proposals, as appropriate, for the Board's consideration and approval during the December 1-2 meeting.