

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: November 15, 2023
 ATTENTION: Members, Medical Board of California
 SUBJECT: New Legislative Proposal – Updates to Business and Professions Code Sections 802.1, 802.5, and 805
 STAFF CONTACT: Aaron Bone, Chief of Legislation and Public Affairs

REQUESTED ACTION

To approve the proposed statutory proposals, as discussed below. If the Members of the Medical Board of California (Board) approve this request, staff will contact the Legislature and attempt to get the proposal included in a committee bill.

BACKGROUND

Under current law, various organizations and licensees are required to file reports to the Board regarding its licensees regarding findings or allegations of unprofessional (including criminal) conduct. With respect to those authorized to practice medicine, the following three code sections use definitions of licensees that do not include those who hold a postgraduate training license (PTL), those authorized to practice medicine in a postgraduate training program before being issued a PTL, and certain special permit programs.

[Business and Professions Code \(BPC\) section 802.1](#) requires a physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric medicine, and a physician assistant to report to their licensing board that they have been charged with a felony or have been convicted of a felony or misdemeanor. In fiscal year (FY) 2022-23 (July 1, 2022 – June 30, 2023), the Board received 54 reports pursuant to this code section.

[BPC section 802.5](#) requires a coroner to make a report to the appropriate licensing board if they have documented findings by an eligible pathologist that a death may be the result of the gross negligence or incompetence of a physician and surgeon, podiatrist, or physician assistant. In FY 2022-23, the Board received no reports pursuant to this code section.

[BPC section 805](#) defines “peer review” and “peer review body” and states the conditions whereby specified individuals must report to the appropriate licensing board that their licensee was subject to certain sanctions by a peer review body. As it pertains to the Board, that section defines licensee (using the term “licentiate”) to mean a physician and surgeon, licensed midwife, or a person authorized to practice medicine pursuant to Section 2113 or 2168. In FY 2022-23, the Board received 97 reports pursuant to this code section.

[BPC section 2064.5](#) authorizes a physician to practice medicine in their postgraduate training program for the first 180 days of their program, before obtaining their PTL.

BPC sections [2111](#), [2112](#), [2113](#), and [2168](#) are special permit programs that authorize an individual to practice medicine only in conjunction with a specified fellowship, medical study, or academic role. These programs require a qualified facility or institution to sponsor and oversee the individuals seeking these permits.

As of the end of FY 2022-2023, the Board had 7,552 PTLs and 158 special permits in effect.

ANALYSIS

To help ensure that the Board receives these reports related to all licensees authorized to practice medicine, staff recommend that the above identified statutes be updated, as indicated below (newly proposed language is indicated in underlined and italicized text).

BPC section 802.1.

(a) (1) A physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric medicine, *holder of a postgraduate training license, a person practicing medicine pursuant to section 2064.5, 2111, 2112, 2113, or 2168,* and a physician assistant shall report either of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000).

BPC section 805.

(a) (2) "Licentiate" means a physician and surgeon, doctor of podiatric medicine, *holder of a postgraduate training license,* clinical psychologist, marriage and family therapist, clinical social worker, professional clinical counselor, dentist, licensed midwife, physician assistant, or nurse practitioner practicing pursuant to Section 2837.103 or 2837.104. "Licentiate" also includes a person authorized to practice medicine pursuant to Section *2064.5, 2111, 2112,* 2113 or 2168.

BPC section 802.5.

(a) *(1)* When a coroner receives information that is based on findings that were reached by, or documented and approved by a board-certified or board-eligible pathologist indicating that a death may be the result of a physician and surgeon's, podiatrist's, or physician assistant's gross negligence or incompetence, a report shall be filed with the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or the Physician Assistant Board. The initial report shall include the name of the decedent, date and place of death, attending physicians or podiatrists, and all other relevant information available. The initial report shall be

followed, within 90 days, by copies of the coroner's report, autopsy protocol, and all other relevant information.

(2) As used in this section "physician and surgeon" also includes a person holding a postgraduate training license and a person practicing medicine pursuant to section 2064.5, 2111, 2112, 2113, or 2168.

(b) The report required by this section shall be confidential. No coroner, physician and surgeon, or medical examiner, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her acting in compliance with this section. No board-certified or board-eligible pathologist, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her providing information under subdivision (a).