

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 806
AUTHOR: Roth
BILL DATE: May 28, 2021, Amended
SUBJECT: Healing Arts
SPONSOR: Author

DESCRIPTION OF CURRENT LEGISLATION:

This is the Medical Board of California's (Board) sunset legislation and it includes language to extend the sunset date of the Board by two years, increase licensing fees, allow the Board to recover its investigation and prosecution costs for disciplined physicians, update the requirements for a postgraduate training license (PTL) holder to obtain a physician's license, and state the Legislature's intent for an enforcement monitor to evaluate the Board's enforcement efforts.

Further, SB 806 is expected to be the sunset bill for the Osteopathic Medical Board of California (OMBC) and the Physician Assistant Board (PAB). The bill also contains a technical amendment related to the written examination administered by the PAB.

RECENT AMENDMENTS:

The previously published analysis was based upon the May 20, 2021 version of the bill. Since then, the bill was amended on May 28, 2021, as follows:

- Eliminated the provision that creates a public member majority on the Board
- Reduced the proposed increases to initial licensure and renewal fees for physicians from \$1,150 to \$863
 - This would result in an \$80 net increase to the current fee amount of \$783, which is about 22 percent of the amount requested by the Board
- Renames the PTL as the "postgraduate license"
- Allows a postgraduate license holder to meet the postgraduate training requirement if their program director grants them credit for completing a 36 month program

BACKGROUND:

Sunset review is the Legislature's regular process to review the operations, budget, and other laws related to the boards and bureaus within the Department of Consumer Affairs (DCA). To extend the authority to appoint the Members of the Board and the Board's Executive Director, the Legislature and Governor must enact a bill this year.

In December 2020, the Board published its [Sunset Review Report](#), which contained ten statutory requests for the Legislature to consider enacting into law, which are discussed in priority order in Section 12, New Issues.

Current law generally requires an applicant to obtain 36 months of postgraduate training in an approved program to qualify for licensure in this state. Following graduation from medical school, an unlicensed individual must obtain a PTL to participate in a postgraduate training program, as these programs require a participant to practice medicine.

The Board has become aware of challenges facing certain PTL holders, including an inability to bill MediCal for services when moonlighting outside of their postgraduate training program.

ANALYSIS:

SB 806 contains several provisions related to the Board:

Implements Modest Licensing Fee Increases

The Board last increased its initial licensure and renewal fees for physicians on January 1, 2007. As previously noted, the Board is projected to become insolvent sometime in Fiscal Year (FY) 2022-23 (between July 1, 2022 and June 30, 2023).

To avoid insolvency at an earlier date, the Board is scheduled to receive a \$12 million dollar loan from the Bureau of Automotive Repair in FY 2021-22. According to DCA, that loan would need to be repaid, with interest, within 24 months of the date in which it is taken.

In January 2020, [an independent analysis](#) of the Board's revenue and expenditures proposed increases to most of the Board's fee amounts. The Board approved the recommendations of the new fee amounts and included them within the Board's Sunset Report.

With the exception of the initial licensure and renewal fees for physicians, all of the new fee amounts requested by the Board are included within SB 806. Unfortunately, as the vast majority of the Board's funding is provided by physician fees, the proposed increase (\$783 to \$863) is not anticipated to enable the Board to avoid insolvency. An estimate of the impact of the proposed fee increase is attached to this analysis.

SB 806 requires the Legislature to review the initial licensure and renewal fee amounts for physicians in 2022 to determine whether a future fee increase is necessary to ensure the solvency of the Board's fund.

The Board also requested an increase in its maximum reserve amount (from four to 24 months) and the authority to increase its fees by a further 10 percent through the

rulemaking process. Those two provisions are not included in SB 806. Collectively, the fee and reserve requests were the Board's top priority in the Sunset Report.

Restores Cost Recovery

SB 806 proposes to repeal the language¹ that prevents the Board from obtaining investigation and prosecution costs for a disciplinary proceeding against a physician licensee. As discussed in its Sunset Report, the Board lost this authority in 2006 and believes it will help offset the costs of its investigations and may provide an incentive for licensees to settle their case at an earlier time. Earlier settlements would allow the Board to more quickly impose discipline and limit certain costs associated with the administrative hearing process. This proposal was the Board's second highest priority in its Sunset Report.

In response to a recent request to the Legislature for projected cost recovery (CR) revenue, Board staff reported the following:

	3-Year Discipline Rate Average	Projected Amount Ordered	Projected Amount Collected
FY 2021-22	174 ²	\$1,315,670.29	\$409,831.30 ³
FY 2022-23	348	\$2,670,810.70	\$819,662.59
FY 2023-24	348	\$2,710,872.86	\$1,688,873.79
FY 2024-25	348	\$2,751,535.95	\$1,714,206.90

The projections in the above chart were developed based upon a review of OMBC's CR orders and collections over a five and 10 year period, respectively. The evaluation determined that OMBC had an average CR order amount of \$7,561 and a collection rate of 62.3 percent. The amounts ordered and collected in FY 2023-24 and 2024-25 are adjusted for inflation by 1.5 percent, annually.

Updates the Postgraduate Training Licensure Program

SB 806 renames the postgraduate training license as the postgraduate license. For context, current PTL holders are generally unable to enroll in, and receive payment for services through, MediCal outside their training program, which limits their ability to moonlight in other facilities. According to the Department of Health Care Services,

¹ [See Business and Professions Code \(BPC\) section 125.3\(k\)](#)

² Assumes an implementation date of January 1, 2022.

³ Assumes half the collection rate the first year CR is implemented.

which manages the MediCal program, PTL holders are ineligible for this program because the PTL is a restricted license.

Similarly, PTL holders have reported being unable to receive approval from the Substance Abuse and Mental Health Services Administration to prescribe buprenorphine, a medication used to help treat opioid addiction. The name change seems aimed at addressing those problems.

Currently, PTL holders are required to complete 36 months of postgraduate training, with 24 continuous months in the same program, to qualify for a physician's license. Some PTL holders who took a leave of absence during their training, and did not complete 36 months of training as a result, may not qualify for licensure under current law. This change would allow a postgraduate licensee (renamed from the PTL) to obtain a physician's license if they receive credit for completing 36 months of postgraduate training, based upon the attestation of their postgraduate training program director.

Further, the bill clarifies that a postgraduate licensee is authorized to sign any forms a physician is authorized to sign. This may address concerns raised by stakeholders that PTL holders have been unable to sign certain disability and employment related forms.

In addition, SB 806 states that upon review of supporting documentation, the board, in its discretion, may grant a physician's license to an applicant who demonstrates substantial compliance with the 36-month postgraduate training requirements.

Expresses the Legislature's Intent to Establish an Enforcement Monitor

The bill states that “[it] is the intent of the Legislature for an enforcement monitor to monitor and evaluate the enforcement efforts of the Medical Board of California, with specific concentration on the handling and processing of complaints and timely application of sanctions or discipline imposed on licensees and persons in order to protect the public.” The language does not further specify the scope of the enforcement monitor or how the work of the monitor would be funded, therefore, further amendments to define the role of the monitor would be necessary to implement this provision.

Prior legislation ([SB 1950, Chapter 1085 of 2002 Statutes](#)) created an enforcement monitor who was tasked with monitoring the Board's enforcement program for up to a two year period. The monitor was appointed by the DCA Director, with the minimum requirements that the person selected have experience conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and with relevant administrative procedures.

The bill provided the monitor with the following goals:

- Improving the quality and consistency of complaint processing and investigation
- Reducing the timeframes for completing complaint processing and investigation
- Reducing any complaint backlog

- Assessing the relative value to the Board of various sources of complaints or information available to the Board to identify licensees who practice substandard care causing serious patient harm
- Assuring consistency in the application of sanctions or discipline imposed on licensees in the following areas:
 - The accurate and consistent implementation of the laws and rules affecting discipline
 - Appropriate application of investigation and prosecution priorities, particularly with respect to priority cases, as defined in Section 2220.05
 - Board and Attorney General staff, defense bar, licensee, and patients' concerns regarding disciplinary matters or procedures
 - The board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding physicians and surgeons

Following completion of the work of the enforcement monitor, legislation was signed into law ([SB 231, Chapter 674 of 2005 Statutes](#)) that implemented various changes (along with certain recommendations from the monitor), including, among others:

- Required a physician to report their conviction of a misdemeanor substantially related to the qualifications, functions, or duties of a physician and surgeon
 - The Board was required to publicly post any such misdemeanor
- Conduct a study of the peer review process to discipline physicians
- Authorized the Board to impose fines on licensees who fail to produce documents requested by the Attorney General's Office (AGO) or investigators within 15 days
- Repealed the Board's diversion program
- Increased the Board's physician initial licensure and renewal fees from \$610 to \$790
- Created a two-year pilot program to implement a vertical prosecution model

Maintains Current Board Makeup and Extends Board Authority for Two Years

The prior version of the bill added two new public members to the Board, with one appointed by the Senate Rules Committee and one appointed by the Speaker of the Assembly. However, the May 28, 2021, amendments removed that language.

The bill extends the authority for the Board members to be appointed for two years, until January 1, 2024, rather than the typical four years.

Notably, the bill so far does not extend the sunset for the Board's authority to appoint an Executive Director or for the AGO to act as legal counsel for the Board for judicial and administrative proceedings.

Next Steps in the Legislative Process

SB 806 is currently located on the Senate Floor and a vote of the full Senate is pending. The Joint Rules of the Legislature require this bill to be approved by the Senate no later than Friday, June 4, 2021.

Following approval by the Senate, the bill will move to the Assembly and would likely next be considered in the Assembly Business & Professions Committee before July 14, 2021. The Legislature will be out of session for their Summer Recess starting July 16, 2021 and will reconvene August 16, 2021. The Board's next scheduled meeting is on August 19-20, 2021.

The next vote on the bill would occur in the Assembly Appropriations Committee prior to August 27, 2021. Finally, the Legislature must pass SB 806 by September 10, 2021. The Governor would have until October 10, 2021 to sign the bill into law.

Consideration of a Position on the Bill

The language of Senate Bill 806 addresses the following priorities for the Board:

- Extends the Sunset date of the Board
- Increases certain licensing fees
- Restores authority to recover investigation and prosecution costs for disciplined physicians
- Mitigates certain challenges faced by PTL holders

While the legislation would increase the Board's fees, absent another funding source, the proposed amounts will not ultimately enable the Board to avoid insolvency. The Board may wish to adopt a position, or otherwise include within a position letter, a request that the Legislature increase the physician fee amounts.

The Board may wish to consider whether the appointment of an enforcement monitor and the addition of two new public members will help to mitigate concerns raised by stakeholders about the priorities of the Board and its operations.

Further, if the Board supports the creation of an enforcement monitor, it may wish to consider whether this new monitor should have the same goals as the previous monitor discussed earlier in this analysis.

Board staff continue to work with legislative staff to advocate for the Board's remaining requests, as discussed in its Sunset Report.

FISCAL: Modest revenue increases and to the Board's fund

SUPPORT: Unknown

OPPOSITION: California Medical Association (CMA) – Oppose, Unless Amended.
CMA expresses significant concerns with the cost recovery language in the bill.

POSITION: Recommendation: Support or Support, if Amended to seek amendments requested by the Board

ATTACHMENT: [SB 806, Roth – Healing Arts.](#)
Version: 5/28/21 – Amended

0758 - Medical Board Analysis of Fund Condition

(Dollars in Thousands)

2021-22 Governor's Budget

Based on FY 2019-20 Actuals and CY FM 9 Projections for FY 2020-21
+ SB 806 proposed fee increase effective January 1, 2022

Prepared 5.31.2021

	Governor's Budget				
	PY 2019-20	CY 2020-21	BY 2021-22	BY+1 2022-23	BY+2 2023-24
BEGINNING BALANCE	\$ 27,155	\$ 18,919	\$ 7,164	\$ 6,504	\$ -5,007
Prior Year Adjustments	\$ -858	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 26,297	\$ 18,919	\$ 7,164	\$ 6,504	\$ -5,007
REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS					
Revenues:					
4121200 Delinquent fees	\$ 116	\$ 129	\$ 100	\$ 100	\$ 100
Proposed Fee Increase			\$ 4	\$ 9	\$ 9
4127400 Renewal fees	\$ 51,109	\$ 52,366	\$ 52,247	\$ 52,247	\$ 52,247
Proposed Fee Increase			\$ 2,694	\$ 5,387	\$ 5,387
4129200 Other regulatory fees	\$ 443	\$ 475	\$ 544	\$ 544	\$ 544
4129400 Other regulatory licenses and permits	\$ 7,333	\$ 6,086	\$ 7,973	\$ 7,973	\$ 7,973
Proposed Fee Increase			\$ 702	\$ 1,405	\$ 1,405
4140000 Sales of documents	\$ -	\$ -	\$ 3	\$ 3	\$ 3
4163000 Income from surplus money investments	\$ 695	\$ 106	\$ 34	\$ -	\$ -
4171400 Escheat of unclaimed checks and warrants	\$ 61	\$ 50	\$ 8	\$ 8	\$ 8
4171500 Escheat of unclaimed property	\$ -	\$ -	\$ -	\$ -	\$ -
4172500 Miscellaneous revenues	\$ 4	\$ 15	\$ 15	\$ 15	\$ 15
4173500 Settlements and Judgments - Other	\$ -	\$ 30	\$ -	\$ -	\$ -
Totals, Revenues	\$ 59,761	\$ 59,257	\$ 64,324	\$ 67,691	\$ 67,691
Transfers from Other Funds					
Loan from Vehicle Inspection and Repair Fund (0421) per CS 14.00, Budget Act of 2020	\$ -	\$ -	\$ 12,000	\$ -	\$ -12,041
Total Revenues, Transfers, and Other Adjustments	\$ 59,761	\$ 59,257	\$ 76,324	\$ 67,691	\$ 55,650
Total Resources	\$ 86,058	\$ 78,176	\$ 83,488	\$ 74,195	\$ 50,644
EXPENDITURE AND EXPENDITURE ADJUSTMENTS					
Expenditures:					
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 62,755	\$ 68,794	\$ 73,918	\$ 76,136	\$ 78,420
Estimated Overcollection of Reimbursements		\$ -1,795	\$ -1,837	\$ -1,837	\$ -1,837
8880 Financial Information System for California (State Operations)	\$ -8	\$ -	\$ -	\$ -	\$ -
9892 Supplemental Pension Payments (State Operations)	\$ 685	\$ 685	\$ 685	\$ 685	\$ 685
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 3,707	\$ 3,328	\$ 4,218	\$ 4,218	\$ 4,218
Total Expenditures and Expenditure Adjustments	\$ 67,139	\$ 71,012	\$ 76,984	\$ 79,202	\$ 81,486
FUND BALANCE					
Reserve for economic uncertainties	\$ 18,919	\$ 7,164	\$ 6,504	\$ -5,007	\$ -30,842
Months in Reserve	3.2	1.1	1.0	-0.7	-4.4

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR BY+1 AND ON-GOING.
B. ASSUMES APPROPRIATION GROWTH OF 3% PER YEAR IN BY+1 AND ON-GOING..
C. ASSUMES INTEREST RATE OF 0.5%