

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER:	SB 806
AUTHOR:	Roth
BILL DATE:	July 13, 2021, Amended
SUBJECT:	Healing Arts
SPONSOR:	Author
POSITION:	Support, if Amended

DESCRIPTION OF CURRENT LEGISLATION:

This is the Medical Board of California's (Board) sunset legislation, and it includes, among other provisions, 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 creates an enforcement monitor to report to the Legislature on the Board's enforcement efforts.

Further, SB 806 is the sunset bill for the Osteopathic Medical Board of California (OMBC), the Podiatric Medical Board of California (PMBC), and the Physician Assistant Board (PAB). The bill contains provisions related to those boards.

RECENT AMENDMENTS AND ACTION:

The Board adopted a Support, if Amended position during a special meeting on June 1, to request the following amendments:

- Update the composition of the Board so that a majority are public members.
- Implement the proposed enforcement monitor using the framework from the prior enforcement monitor, as described in [section 19 of SB 1950 \(Figueroa\), Chapter 1085 of 2002 Statutes](#).
- Revert back to all the fee amounts included in the May 20, 2021, version of SB 806.
- Extend the Board for four more years.

In addition, the Board has continued to advocate for the additional statutory changes requested by the Board in its [Sunset Review Report](#)¹.

On June 3, SB 806 was approved by the Senate by a vote of 32-4. On July 13, the bill was amended, as follows:

¹ See Section 12, New Issues, starting on page 205.

- Added language regarding the role of an enforcement monitor.
- Updates eligibility criteria for an institution to qualify as an academic medical center, related to certain Board special permit programs.
- Authorizes the Board to require certain license applications be submitted on an electronic form, or another form, including renewing physicians, licensed midwives, and the various polysomnographic registrants.
- Removes the requirement that the Board send paper notices to physicians who are approaching their renewal date.
- Requires all licensees to have an email address and report it to the Board no later than July 1, 2022.
- States that a licensee who fails to renew their license within 30 days after expiration, rather than the 90-day timeframe under current law, is subject to penalty and delinquency fees.
- Clarifies requirements for reporting malpractice settlements and requires licensees to provide to the Board a copy of reportable civil settlement agreements.
- States the intent of the Legislature to require an individual to apply for a physician and surgeon license upon completion of the first year of postgraduate training. Further, that physician and surgeon would only be eligible to retain or renew their license if they continue in postgraduate training and complete 36 months of credit in their program.
- Provides the Board may authorize the Executive Director to issue a confidential letter of advice² to a licensee to resolve a complaint against that licensee. Requires the Board to conduct a rulemaking prior to implementing this authority.
- Authorizes a licensee to stipulate to the surrender of their license for a 10-year period, for certain criminal convictions.
- Prior to referral to the field for investigation, requires quality of care complaints involving licensed midwives to be reviewed by a medical consultant with education, training, and expertise in midwifery.
- Includes certain changes to statutes related to the OMBC, PMBC, and PAB.
 - Among other provisions, eliminates the requirement that the PAB make recommendations to the Board regarding the scope of practice for physician assistants. Also, it eliminates Board authority to adopt, amend, and repeal regulations related to the practice of physician assistants.

Throughout this year, Board staff have been in regular contact with the Legislature advocating for the Board's position on SB 806, including the Board's proposals provided in the Sunset Report. This included the ongoing involvement of the Board President, who participated in key meetings with legislators, and along with the Vice President, testified during the Board's sunset hearings.

² See the Board's [Sunset Report](#), page 217.

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 several 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 Medi-Cal for services when moonlighting outside of their postgraduate training program.

ANALYSIS:

SB 806 contains several key 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. 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.

To support the Board's fund, 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.

Except for the initial licensure and renewal fees for physicians, all of the new fee amounts requested by the Board are included within SB 806. Unfortunately, the proposed physician fee increase (\$783 to \$863) is not sufficient to support the Board's operations.

A fund condition report is attached to this analysis. The report estimates the new revenue expected under SB 806 (including the loan proceeds) and projects that the Board's fund will go negative sometime in Fiscal Year (FY) 2022-23 (between July 1, 2022, and June 30, 2023).

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.

Restores Cost Recovery

SB 806 repeals the language³ 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.

In response to a 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 ⁴	\$1,315,670.29	\$409,831.30 ⁵
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, Medi-Cal outside their training program, which limits their ability to moonlight in other facilities. According to the Department of Health Care Services,

³ See [Business and Professions Code \(BPC\) section 125.3\(k\)](#)

⁴ Assumes an implementation date of January 1, 2022.

⁵ Assumes half the collection rate the first year CR is implemented.

which manages the Medi-Cal program, PTL holders are ineligible for this program because they consider the PTL to be a restricted license.

Similarly, some physician organizations report that PTL holders are unable to receive approval from the Substance Abuse and Mental Health Services Administration to prescribe buprenorphine, a medication used to help treat opioid addiction.

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.

The most recent amendments to the bill state the Legislature's intent to allow an individual to obtain a physician and surgeon license after their first year of postgraduate training. The intent of this proposal is to allow individuals to obtain a physician and surgeon license in as little as 12 months, which is 24 months earlier than under current law. Once granted that license, individuals may be free to moonlight anywhere outside of their postgraduate training program, potentially without the knowledge or oversight of their program director or leave their program after 12 months with their physician and surgeon license to practice independently.

To retain and renew their license, however, that individual would need to continue in their program and ultimately receive credit for 36 months of postgraduate training. The details of this proposal are not complete and are pending further amendments from the Legislature.

Establishes an Enforcement Monitor for the Board

The enforcement monitor would be appointed (and supervised) by the DCA Director no later than March 1, 2022. The monitor shall be in their position for no more than two years. The director shall assist the monitor perform their duties and may specify any additional duties. The monitor's duties and authority shall be:

- Monitor and evaluate the Board's enforcement efforts with specific concentration on the handling and processing of complaints and timely application of sanctions

or discipline imposed. The monitor shall have the same investigatory authority as the DCA Director.

- Submit an initial written report to DCA and the Legislature by December 1, 2023, and a subsequent report by March 1, 2023 (possible typo in the bill language). A final written report shall be issued within two and one-half years after the monitor's appointment. The monitor shall provide the Board the opportunity to reply to any facts, findings, issues or conclusions in their reports with which the Board disagrees.
 - These reports shall be made available to the public and media.
- Make oral reports to DCA or the Legislature.
- Shall not exercise authority over the Board's management or staff.

The Board's responsibilities regarding the monitor are:

- Cooperate with the monitor and provide data, information, and files as requested by the monitor.
- Pay all costs associated with the employment of the monitor.

Prior legislation ([SB 1950, Chapter 1085 of 2002 Statutes](#)) created an enforcement monitor tasked 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

Authorizes a Confidential Letter of Advice

Requested via the Board's Sunset Report, SB 806 authorizes the issuance of a confidential letter of advice to resolve complaints. These are intended to be issued in circumstances where there is no concern related to the licensee's fitness to practice and the proposed action (e.g. an educational course) is sufficient to protect the public and rehabilitate the licensee.

The complaint and letter of advice would be maintained for a three-year period, and if no further complaint against the licensee is received, the complaint and letter will be purged. The bill allows the Board to delegate this authority to the Executive Director and requires that a rulemaking be completed to implement this new enforcement tool.

Supports Transition to Online License Applications

SB 806 authorizes the Board to end the use of paper-based application processes for certain initial applicants and renewing licensees, including:

- Physicians who are renewing their license
- Initial licensure and renewal applications for licensed midwives and the various polysomnography registrants.

In addition, the bill eliminates the requirement for the Board to mail renewal reminders to its licensees. It also requires licensees to obtain an email address (if they don't already have one) and provide it to the Board no later than July 1, 2022.

Prior to implementing changes to its application processes, Board staff would develop and execute a communication plan to notify applicants and licensees.

Maintains Current Board Makeup and Extends Board Authority for Two Years

The current version of the bill does not change the composition of the Board and it 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. Legislative staff indicate that this will be addressed in future amendments.

Next Steps in the Legislative Process

SB 806 is awaiting a hearing in the Assembly Appropriations Committee. After approval by that committee, it will then be considered by the full Assembly, likely during the week of August 30, followed by a vote in the Senate prior to September 10. 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
- Makes progress on addressing certain challenges faced by PTL holders
- Supports eliminating paper from the Board’s application processes
- Implements the enforcement monitor
- Establishes authority for a confidential letter of advice

The Board may wish to consider whether the intended changes to the PTL and related training requirements are sufficient to protect the public, as compared to current law.

SB 806 does not include all the Board’s priorities; however, it makes progress on several key issues. This is the Board’s final meeting scheduled before the Legislature adjourns on September 10.

Due to the unusual circumstances surrounding sunset legislation, the Board may wish to consider maintaining a Support, if Amended position, but direct staff to request the Governor sign the bill into law, even if the bill is not amended as requested by the Board.

FISCAL: Modest revenue increases to the Board’s fund

SUPPORT: Medical Board of California (if amended)

OPPOSITION: Altamed Health Services Corporation (unless amended)
 California Academy of Family Physicians (unless amended)
 California Health+ Advocates (unless amended)
 California Chapter of the American College of Emergency Physicians (unless amended)
 California Residency Network (unless amended)
 California Medical Association (unless amended)
 Community Clinic Association of Los Angeles County (unless amended)
 Consumer Watchdog (unless amended)
 Health Alliance of Northern California (unless amended)
 Lifelong Medical Care (unless amended)
 [Partial list]

ATTACHMENT: [SB 806, Roth – Healing Arts](#).
 Version: 7/13/21 – Amended

0758 - Medical Board
Analysis of Fund Condition

(Dollars in Thousands)

2021-22 Governor's Budget

Prepared 5.31.2021

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

	Governor's Budget				
	PY	CY	BY	BY+1	BY+2
	2019-20	2020-21	2021-22	2022-23	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%