

MEDICAL BOARD OF CALIFORNIA - 2022 TRACKER LIST

January 25, 2022

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 562	Low	Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: Health Care Providers: Mental Health Services	Senate Appropriations	Support, if Amended	04/08/21
AB 1102	Low	Telephone Medical Advice Services	Senate Floor	Support	N/A
AB 1278	Nazarian	Physicians and Surgeons: Payments: Disclosure: Notice	Senate Appropriations	Support	07/13/21
AB 1636	Weber	Physician's and Surgeon's Certificate: Registered Sex Offenders	Assembly Business & Professions		N/A
AB 1662	Gipson	Licensing Boards: Disqualification From Licensure: Criminal Conviction	Assembly Rules (pending committee referral)		N/A
SB 57	Wiener	Controlled Substances: Overdose Prevention Program	Assembly Public Safety	Neutral	01/18/22
SB 528	Jones	Juveniles: Health Information Summary: Psychotropic Medication	Assembly Human Services	Support	05/25/21

Green – For Discussion; Blue – No Discussion Needed

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 562
AUTHOR: Low
BILL DATE: April 8, 2021, Amended
SUBJECT: Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: Health Care Providers: Mental Health Services.
SPONSOR: United Nurses Associations of California/Union of Health Care Professionals
California Society of Anesthesiologists
California Medical Association
POSITION: Support, if Amended

DESCRIPTION OF CURRENT LEGISLATION

Requires the Department of Consumer Affairs (DCA) to establish a mental health resiliency program, until Jan 1, 2025, in consultation with certain health arts boards, and contract with vendors of mental health services to provide mental health services to eligible licensees who provide, or have provided, consistent in-person health care services to patients with COVID-19, as specified.

During the Medical Board of California's (Board) May 13-14 meeting, the Board adopted a Support, if Amended position, requesting the following changes:

- All applications be received and approved by the DCA-selected mental health services vendor(s).
- All program expenses be funded by non-Board funds.

This bill has not been amended since the prior Board meeting.

BACKGROUND

Existing law establishes the Board and charges it with certain licensing and enforcement responsibilities. Existing law states that the protection of the public is the Board's paramount priority. In addition, current law authorizes the Board to establish a Physician Health and Wellness Program to provide for the prevention of substance abuse issues.

ANALYSIS

According to the author:

"If the true measure of a society is how it treats its most vulnerable people, we should be equally concerned with how well we support heroes who have been working nonstop during a generational crisis. The pandemic has placed our nurses, physicians, and frontline health care workers under enormous stress,

and they have been carrying this unbelievable burden for nearly a year. The trauma they have experienced will not just go away when vaccines become ubiquitous and the pandemic comes to an end. We need urgent action to support these heroes by expanding access to mental and behavioral health services.”

Responsibilities of DCA

The bill requires the DCA Director to, within three months of the effective date of the bill, in consultation with the relevant healing arts boards, establish a mental health resiliency program to provide mental health services to frontline COVID 19 providers. This bill has an urgency clause and would take effect immediately upon approval of the Governor.

DCA shall contract with one or more vendors of mental health services for the duration of the program, supervise all vendors and monitor vendor utilization rates, and authorize termination of any contract. If the vendor’s contract is terminated, the Director must contract with a replacement vendor as soon as practicable.

Responsibilities of the Boards

The bill requires the Medical Board of California, Osteopathic Medical Board of California, Board of Registered Nursing, Physician Assistant Board, and the Respiratory Care Board of California to do the following:

- Notify licensees and solicit applications for access to the mental health resiliency program immediately upon the availability of any services contracted for.
- Receive applications from eligible licensees that include an attestation that the applicant is eligible and includes the following:
 - The location and type of the facility or facilities the applicant worked as a frontline COVID-19 provider.
 - The applicant’s assigned unit or units at the facility or facilities.
 - A voluntary survey of race or ethnicity and gender identity.

A board shall deem the applicant eligible licensee if the attestation is complete, and any facility and unit listed would provide care to COVID-19 patients. It is unclear how a board would determine whether a certain facility provided care to such patients.

Applicants who willfully make a false statement in their attestation are guilty of a misdemeanor.

The bill provides that application to or participation in the mental health resiliency program shall not be used for purposes of disciplinary action and shall be kept confidential, except that deidentified and aggregated statistics on program usage shall be reported to the Legislature.

Implementation Considerations

While the aim of the program is laudable, the program is likely to lead to significant new costs to the various boards to cover expenses to create and review/approve applications. More significantly, there may be substantial increases in pro-rata payments from the boards to DCA to cover expenses related to the services provided to eligible licensees. Those costs are undetermined.

According to the author's staff, they expect that usage of the program will be modest and are open to considering options that would decrease the costs of the program. In addition, the author is pursuing funding through the state budget to cover the program's costs.

The bill states that application or participation in the program shall not be used for purposes of discipline, which may place a board in a difficult position, since the bill requires applicants to apply through the boards for mental health treatment. Further, interested applicants may be hesitant to submit an application to their licensing boards indicating they require mental health treatment.

<u>FISCAL:</u>	Unknown, potentially major costs to the Board.
<u>SUPPORT:</u>	American College of Emergency Physicians, California Chapter California Academy of Family Physicians California Association of Health Facilities California Pharmacists Association California State Association of Psychiatrists Depression and Bipolar Support Alliance National Association of Social Workers, California Chapter
<u>OPPOSITION:</u>	None
<u>ATTACHMENT:</u>	AB 562, Low - Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: health care providers: mental health services. Version: 04/08/21 – Amended

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1102
AUTHOR: Low
BILL DATE: February 12, 2021, Introduced
SUBJECT: Telephone Medical Advice Services
SPONSOR: Low
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION

This bill would specify that a telephone medical advice service is required to ensure that all health care professionals who provide telephone medical advice services from an out-of-state location are operating consistent with the laws governing their respective licenses. The bill would also specify that a telephone medical advice service is required to comply with all directions and requests for information made by the respective healing arts licensing boards.

This bill has not been amended since the Board adopted a Support position.

BACKGROUND

Prior law required businesses that employed, or contract or subcontract with, the full-time equivalent of five or more persons functioning as health care professionals, whose primary function is to provide telephone medical advice, that provided telephone medical advice services to a patient at a California address to be registered with the Telephone Medical Advice Services Bureau and further required telephone medical advice services to comply with the requirements established by the Department of Consumer Affairs (DCA).

However, the Telephone Medical Advice Services Bureau (Bureau) was sunset (abolished) as of January 1, 2017.

ANALYSIS

According to the author:

"This bill would clarify that the telephone medical advice companies must comply with directions and requests for information from not just the DCA, but also any licensing board that has jurisdiction over the type of advice being provided. Further, by virtue of hiring the professionals, the companies themselves may be providing services under state law. As a result, the oversight over these companies should be clarified to also include the licensing boards."

When the Bureau was abolished, enforcement was transferred to individual board through their existing authority over the practice of the relevant licensed practitioners.

However, the language still requires the companies to comply with DCA direction and requests for information.

The DCA has limited authority over licensing boards and their licensees. This bill would clarify that the enforcement of the regulation of telephone medical advice services is within the jurisdiction of the boards by requiring them to comply with directions and requests from the boards, not just DCA.

It would also clarify that a person who resides out of state and provides telephone medical advice in California must comply with the specific licensing requirements (e.g. not delinquent), not just the scope of practice requirements of their own state's license.

According to the DCA 2017 Annual Report, when the Bureau was abolished, it oversaw 68 registrants.

FISCAL: Minor and absorbable

SUPPORT: California Association of Orthodontists
Medical Board of California

OPPOSITION: None

ATTACHMENT: [AB 1102, Low - Telephone Medical Advice Bureaus.](#)
Version: 2/18/21 – Introduced

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1278
AUTHOR: Nazarian
BILL DATE: July 13, 2021, Amended
SUBJECT: Physicians and Surgeons: Payments: Disclosure:
Notice
SPONSOR: The Center for Public Interest Law (CPIL)
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION

Requires all physicians to provide a written notification informing patients of the federal Centers for Medicare and Medicaid Services (CMS) Open Payments online database and to post a similar notice in an area likely to be seen by patients in each office where they practice.

A violation of the requirements of the bill shall constitute unprofessional conduct.

This bill has not been amended since the prior Board meeting.

BACKGROUND

Current law requires a physician to maintain adequate and accurate records relating to the provision of services to their patients and states that failure to do so constitutes unprofessional conduct.

The Physician Payments Sunshine Act is a federal law that requires medical product manufacturers to disclose to CMS any payments or other transfers of value made to physicians or teaching hospitals. The intention of this law is to increase transparency regarding financial relationships between health care providers and pharmaceutical manufacturers.

According to a [report published by Pro Publica in 2019](#), based upon an analysis of the 50 most prescribed brand-name drugs in Medicare for which manufacturers made payments to physicians in 2016, “[on] average, across all drugs, providers who received payments specifically tied to a drug prescribed it 58% more than providers who did not receive payments.”

ANALYSIS

According to the Author:

"There is currently no state law requiring physicians/surgeons to communicate their financial relationships to patients. This bill empowers patients with relevant information from the Open Payments Database (that already exist) to ask questions about their care or treatment."

The bill contains two requirements. First, all physicians shall provide to patients at the initial office visit, and at annual office or telehealth visits, a written notice regarding the Open Payment database. The written disclosure shall include a signature from the patient or patient representative and the date of signature and the following text:

“The Open Payments database is a federal tool used to search payments made by drug and device companies to physicians and teaching hospitals. It can be found at <https://openpaymentsdata.cms.gov>.”

The bill requires physicians to include in the written or electronic records for the patient a record of this disclosure and requires the physician to provide the patient or patient representative a copy of the signed and dated disclosure.

Second, the bill requires a physician to post in each location where they practice, in an area likely to be seen, a notice regarding the open payments database. That notice shall include an internet website link to that database and the following text:

“For informational purposes only, a link to the federal Centers for Medicare and Medicaid Services (CMS) Open Payments web page is provided here. The federal Physician Payments Sunshine Act requires that detailed information about payment and other payments of value worth over ten dollars (\$10) from manufacturers of drugs, medical devices, and biologics to physicians and teaching hospitals be made available to the public.”

The bill states that for physicians employed by a health care employer, their employer shall be responsible for meeting the requirements of this bill. AB 1278 exempts a physician working in a hospital emergency room from its requirements.

Concerns from Physician and Drug/Device Manufacturers

Opponents of AB 1278 generally argue that federal law is sufficient to support transparency and, therefore, the bill is duplicative. Other groups argue that the bill is burdensome to physicians and interferes with the patient-doctor relationship. The most recent amendments may have mitigated some of these concerns.

The California Medical Association (CMA) remains opposed to AB 1278, indicating that the requirement to annually inform patients of the Open Payments database places an undue burden on physicians to update their existing systems or create new ones. CMA argues that providing an initial disclosure, coupled with a posting in the lobby of a physician’s medical office is sufficient.

FISCAL: Minor and absorbable

SUPPORT: Association for Medical Ethics
Breast Implant Safety Alliance

California Public Interest Research Group
Consumer Attorneys of California
Consumer Federation of California
Consumer Watchdog
Health Access California
Heartland Health Research Institute
Informed Patient Institute
Mending Kids

OPPOSITION:

Advanced Medical Technology Association
Association of Northern California Oncologists
Biocom California
Biotechnical Innovation Organization
California Academy of Family Physicians
California Medical Association
California Life Sciences
California Chapter, American College of Cardiology
California Rheumatology Alliance
California Society of Plastic Surgeons
Liver Coalition of San Diego
Medical Oncology Association of Southern California
Osteopathic Physicians and Surgeons of California

ATTACHMENT:

[AB 1278, Nazarian - Physicians and Surgeons: Payment: Disclosure: Notice.](#)
Version: 7/13/21 – Amended

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1636
AUTHOR: Weber
BILL DATE: January 12, 2022, Introduced
SUBJECT: Physician's and Surgeon's Certificate: Registered Sex Offenders
SPONSOR: California Medical Association

DESCRIPTION OF CURRENT LEGISLATION

Requires the Medical Board of California (Board) to deny licensure applications, automatically revoke, and deny petitions for reinstatement to individuals convicted of, or formally disciplined for, certain sexual offenses, as specified.

BACKGROUND

Business and Professions Code (BPC) section [480](#) specifies the conditions that, generally, a licensing board must follow when considering whether to deny an application for licensure pursuant to the applicant's criminal history. Generally, a board is limited to considering convictions within seven years preceding the date of application. That seven-year limitation does not apply to certain **(but not all)** felony convictions¹ that require registration as a sex offender or specified "serious" felonies².

As of July 1, 2020, this section prohibits a licensing board from requiring an applicant to provide their criminal history and requires a licensing board to rely exclusively upon the conviction history of the applicant as indicated by the California Department of Justice (DOJ) pursuant to an analysis of the applicant's fingerprints (either through a Live Scan, or a physical fingerprint card for out-of-state applicants). These reports are intended to include out-of-state convictions reported by other states.

Further, BPC section 480 does not allow a board to deny a license based on a conviction, including the underlying conduct, that has been dismissed or expunged. The Legislature did not exclude applicants convicted of sex offenses from this bar. This section also prohibits a board from denying a license to anyone, on the basis of a conviction of a crime, or on the basis of acts underlying a conviction, if that person obtains a certificate of rehabilitation, or has been granted clemency or a pardon, or met the rehabilitation criteria of BPC section [482](#). Again, the Legislature did not exclude individuals convicted of sex offenses.

¹ BPC 480 specifies sexual offenses that require registration pursuant to paragraphs (2) and (3) of [Penal Code \(PC\) section 290 \(d\)](#).

² For the list of felonies, see [PC 1192.7](#).

Pursuant to BPC section 482, the Board adopted regulations³ that govern how the Board considers whether an individual with a criminal conviction history has been rehabilitated.

BPC section [2221](#) requires the Board to deny a P&S application to anyone currently required to register as a sex offender in California.

Further, BPC section [2232](#) generally requires the Board to automatically revoke a licensee who is required to register as a sex offender in California. In addition, BPC section [2307](#) sets forth requirements related to the Board's consideration of petitions for reinstatement and penalty relief filed by disciplined individuals.

ANALYSIS

According to the author's fact sheet:

“AB 1636 seeks to maintain confidence in the medical profession by ensuring physicians convicted of sexual misconduct with a patient would automatically have their license revoked and cannot acquire or have it reinstated.”

As discussed below, this bill would place new requirements upon the Board regarding the denial of applications for licensure, automatic revocations, and petitions for reinstatement.

Denials of Licensure Applications

In addition to the current requirements to deny a P&S applicant for licensure who is currently required to register as a sex offender in this state, AB 1636 amends BPC section 2221 to require the Board to deny an application for licensure under any of the following circumstances:

- Applicant is, or previously was, required to register as a sex offender, excluding a specified misdemeanor conviction⁴.
- Applicant was convicted in any court in or outside California for any offense that, if committed or attempted in this state, would require them to register as a sex offender. This would only be applicable if the applicant engaged in this conduct with a patient/client or with a former patient/client if the health care relationship was terminated for the purpose of committing the criminal offense.
- Applicant was formally disciplined by a licensing board in or outside California for conduct that, if committed by a P&S in this state would be a cause for

³ See [16 CCR section 1309](#).

⁴ Misdemeanor violations of [Penal Code section 314](#) are excluded.

discipline based on professional sexual misconduct in violation of BPC section [726](#) or [729 \(a\)](#).

Further, an applicant denied pursuant to these sexual misconduct provisions would not be eligible to reapply.

Automatic Revocations

AB 1636 adds to the Board's existing requirement to automatically revoke a licensee required to register as a sex offender (except for convictions of specified misdemeanors)⁵.

Specifically, a licensee convicted of a crime in any state, that if committed or attempted in this state would be subject to registration as a sex offender, pursuant to [Penal Code \(PC\) 290 \(c\)](#) in California, would be subject to automatic revocation. This would only be applicable if the licensee engaged in this conduct with a patient/client or former patient/client if the health care relationship was terminated for the primary purpose of committing the criminal offense.

Also, the bill deletes a pathway in BPC section 2232 that allows a revoked individual who was convicted of a sexual offense to petition the superior court to have their license reinstated.

Petitions for Reinstatement

AB 1636 prohibits the Board from reinstating a licensee revoked under any of the following circumstances:

- The license was surrendered or revoked based on a finding by the Board that the person committed an act of sexual misconduct in violation of BPC section 726 or 729 (a).
- The licensee was convicted of a crime in any state, that if committed or attempted in this state would be subject to registration as a sex offender, pursuant to PC 290 (c) in California. This would only be applicable if the applicant engaged in this conduct with a patient/client or a former patient/client if the health care relationship was terminated for the primary purpose of committing the criminal offense.
- The person has been required to register as a sex offender, except for certain misdemeanor convictions.

⁵ Ibid.

Implementation Considerations

This bill proposes to strengthen the laws that protect consumers from a P&S who has been convicted of sexual criminal offenses. However, AB 1636 does not cover all instances of P&S sexual misconduct. Certain language in the bill focuses on criminal or professional sexual misconduct committed against current, and certain former, patients/clients. Therefore, those who engage in sexual misconduct outside those relationships may not be subject to the application, automatic revocation, and reinstatement restrictions proposed by the bill.

Inconsistency with BPC Section 480

As noted above, BPC section 480 prescribes the conditions whereby a licensing board may deny an applicant due to their criminal history. AB 1636 conflicts with the requirements of BPC section 480; therefore, the bill should be amended to clarify that its requirements will not be superseded by the limitations contained within BPC section 480. For example, without amendments to AB 1636, the Board may be unable to deny an applicant with an expunged criminal sexual offense.

Incomplete Reporting of Applicant Criminal History

Board staff have observed that, on occasion, the DOJ criminal conviction reports do not provide a complete accounting of an applicant's history. Since the Board recently was prohibited from requiring an applicant to provide their criminal history on the application form, unless an applicant voluntarily provides this information, the Board is completely reliant upon the DOJ's reports.

Denials of a P&S Applicant

Under existing law, the Board is required to deny an application for P&S licensure to anyone currently required to register as a sex offender in California, regardless of their relationship with the victim. This bill expands that to include anyone who has ever been required to register in California.

AB 1636 further expands the requirement to deny a license to include certain criminal convictions in other states, but only in situations where the P&S was convicted of a crime that would require registration as a sex offender **and** the crime involved current, or certain former, patients/clients. As a result, under the bill, a P&S convicted of a sexual crime in another state may still be eligible for licensure, even though they would not be eligible if that same crime was committed in California.

Automatic Revocation of Registered Sex Offenders

Similarly, the Board is currently required to revoke the license of any P&S convicted of a crime that requires their registration in California as a sex offender, regardless of their relationship with the victim. AB 1636 adds to this requirement, but only in situations where the P&S was convicted of a crime that would require registration as a sex offender **and** the crime involved current, or certain former, patients/clients.

As a result, under the bill, a P&S convicted of a sexual crime in another state might not be automatically revoked, even though they would if that same crime was committed in California.

Restrictions on Reinstatement

The bill language disqualifying a person from being reinstated if they surrendered their license “based upon a finding by the board...” may not have the intended effect. When a P&S surrenders their license, there is not a finding by the Board, as the surrender is accepted by the Executive Director, prior to any decision of a Board disciplinary panel.

Further, for the sake of clarity, it would be helpful to specify in the bill language that the restrictions on reinstatement will impact surrenders and revocations that are effective on or after the effective date of the amendment to statute. This would be consistent with prior court decisions that prevent the Board from applying new requirements retroactively.

Recommended Amendments

Staff recommend the Board adopt a Support, if Amended position with the following requested amendments to AB 1636:

- Address Inconsistency with BPC section 480: Ensure that the provisions of AB 1636 are not superseded by the requirements of BPC section 480.
- Application Denials:
 - Authorize the Board to automatically revoke a license if the Board discovers, after a license is granted, that the application should have been denied due to the applicant’s criminal history involving sexual misconduct.
 - Align the expansion of application denials to the requirements of current law, so that a P&S who commits any sexual crime in any jurisdiction that, if committed in California, would require them to register as a sex offender in this state.
 - Clarify that this requirement applies to individuals who submit an application on or after the effective date of this bill.
- Automatic Revocation: Align the expansion of automatic revocation to the requirements of current law, so that a P&S who commits any sexual crime in any jurisdiction that, if committed in California, would require them to register as a sex offender in this state, will be automatically revoked.

- License Reinstatement

- Clarify that a license surrender following an accusation of a violation of BPC 726 or BPC 729 (a) disqualifies an individual from having their license reinstated.
- Clarify that the restrictions on reinstatement petitions apply to surrenders and revocations that are effective on or after the effective date of the amendment to statute.
- Ensure that the Board is required to deny a petition for reinstatement to a P&S who commits any sexual crime in any jurisdiction that, if committed in California, would require them to register as a sex offender in this state.

FISCAL: Unknown costs or savings to the Board.

SUPPORT: California Medical Association (sponsor)

OPPOSITION: None identified

POSITION: Recommendation: Support, if Amended

ATTACHMENT: [AB 1636, Weber – Physician’s and Surgeon’s Certificate: Registered Sex Offenders.](#)
Version: 1/12/22 – Introduced

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1662
AUTHOR: Gipson
BILL DATE: January 18, 2022, Introduced
SUBJECT: Licensing Board: Disqualification from Licensure:
Criminal Conviction
SPONSOR: Council on State Governments – Justice Center

DESCRIPTION OF CURRENT LEGISLATION

Requires a licensing board within the Department of Consumer Affairs to provide a “preapplication determination” to a prospective applicant that indicates whether their criminal conviction history may disqualify them from licensure.

BACKGROUND

Business and Professions Code (BPC) section [480](#) specifies the conditions that, generally, a licensing board must follow when considering whether to deny an application for licensure pursuant to the applicant’s criminal history. Generally, a board is limited to considering convictions within seven years preceding their date of application. That seven-year limitation does not apply to certain felony crimes¹ that require registration as a sex offender or specified “serious” felonies².

As of July 1, 2020, this section prohibits a licensing board from requiring an applicant to provide their criminal history and requires a licensing board to rely exclusively upon the conviction history of the applicant as indicated by the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) pursuant to an analysis of the applicant’s fingerprints (either through a Live Scan, or a physical fingerprint card for out-of-state applicants).

Further, BPC section [2221](#) specifies additional conditions whereby the Medical Board of California (Board) may deny an application, or grant a probationary license, for a physician and surgeon (P&S) license. This section is proposed to be amended by AB 1636 (Weber); see **Board Agenda item 14.A.4.** for additional information.

When Board staff receive an application from an individual with a criminal conviction history, staff analyze what bearing that conviction has on the qualifications, functions, and duties related to the license they are seeking. Adopted pursuant to BPC section

¹ BPC 480 specifies sexual offenses that require registration pursuant to paragraphs (2) and (3) of [Penal Code \(PC\) section 290 \(d\)](#).

² For the list of felonies, see [PC 1192.7](#).

[482](#), the Board's regulations³ require the Board to consider certain criteria when evaluating whether an applicant with a criminal conviction history has been rehabilitated. To complete this consideration, the Board is generally required to evaluate the applicant's conduct following their conviction, which may include their conduct while completing their required education and training (if completed following the conviction(s) in question).

For example, with P&S licensure applicants, the Board requires the medical school and postgraduate training programs to provide information about the applicant's performance and to disclose any issues that occurred during medical school or training. This information may be relevant to their criminal history and may be considered when evaluating an application.

In Fiscal Year (FY) 2020-21, the Board received approximately the following number of applications from individuals with a criminal conviction history:

- 53 P&S applicants
- 29 postgraduate training license applicants
- 2 polysomnography applicants

The Board did not deny any applicants for licensure due to their criminal conviction history in FY 2020-21 or FY 2019-20. The Board denied two applications related to the applicant's criminal conviction history in FY 2018-19 and five in FY 2017-18.

ANALYSIS

AB 1662 allows an applicant to request a preapplication determination regarding how their criminal conviction history may disqualify them for licensure with any licensing board. The bill allows their request to be filed at any time, including before they have obtained any training or education required for licensure.

Upon receipt of the request, a licensing board shall make the required determination and inform the applicant by mail or email within a "reasonable" time.

As noted above, the Board receives a very low volume of applications from those with a criminal conviction history and, at least in the most recent fiscal year, did not deny anyone a license due to those circumstances.

According to background information provided by the author's office, 21 states have a process in place for individuals to make a similar request, and further state:

³ See [16 CCR section 1309](#)

“These mechanisms generally allow petitions to be filed at any time, including prior to meeting applicable education, training, and/or experiential requirements. A petitioner whose conviction is deemed disqualifying may be required to wait a number of years before filing a new petition. Preliminary determinations are not necessarily binding and may be reversed under certain circumstances like a conviction for a new offense.”

Implementation Considerations

The bill raises two key challenges to the Board in its implementation.

Inability to Provide a Complete and Accurate Determination: As discussed above, statute and the Board’s regulations require the Board to evaluate a wide range of evidence when considering whether an applicant has been rehabilitated following their conviction(s).

When an applicant is being considered for licensure, the Board does so following receipt of a complete application, including the applicant’s criminal conviction history, as reported by DOJ. It should be noted that Board staff have observed that, on occasion, the DOJ criminal conviction reports do not provide a complete accounting of an applicant's history.

Therefore, if the preapplication determination request is filed before they submit a complete application (which would necessarily include records related to their required education and training) the Board would not have the full picture of the applicant’s relevant conduct. As a result, the Board may be prevented from receiving evidence of their rehabilitation related to their conduct during their postgraduate training. In the absence of this information, it is unclear how the Board could provide an accurate preapplication determination of whether their criminal history may cause their application to be denied.

Further, BPC section 480 generally allows a licensing board to consider criminal convictions that occurred seven years prior to the time of the application for licensure. For those seeking licensure as a P&S, and who want a preapplication determination prior to starting medical school, the individual’s criminal history may not be relevant by the time they complete the requirements for licensure. In such instances, except for those who were convicted of a serious felony⁴, BPC section 480 already would provide applicants certainty that their prior convictions are not a basis for denial of their application.

AB 1662 does not specify whether the individual must submit their fingerprints or provide certain other information to a board to facilitate the preapplication determination.

⁴ See [PC 1192.7](#).

Absent clarification in the bill, a rulemaking may be required to specify these relevant requirements.

Lack of Fee Authority: The Board relies upon fee revenue to support its operations, but AB 1662 does not authorize charging a fee associated with this new workload. In addition to workload, licensure applicants bear the cost of a fingerprint analysis (which is also not specified in the bill's language).

Consideration of a Position

Due to the implementation challenges discussed above, and the low volume of applicants who are denied licensure due to their criminal conviction history, the Board may wish to consider either an Oppose or an Oppose, Unless Amended position, with the following requested amendments:

- Clarify that any preapplication determination provided is only based upon the information provided by the requesting individual and is not binding upon the issuing licensing board.
- Establish a fee sufficient to address the Board's costs associated with completing a preapplication determination and to reimburse the Board for any costs related to the rulemaking process necessary to implement the bill.

FISCAL: Unknown, likely minor costs related to application review and possible rulemaking.

SUPPORT: Council on State Governments – Justice Center (sponsor)

OPPOSITION: None identified.

POSITION: Recommendation: Oppose or Oppose, Unless Amended

ATTACHMENT: [AB 1662, Gipson – Licensing Board: Disqualification from Licensure: Criminal Conviction.](#)
Version: 1/12/22 – Introduced

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 57
AUTHOR: Wiener
BILL DATE: July 5, 2021, Amended
SUBJECT: Controlled Substances: Overdose Prevention Program
SPONSOR: California Association of Alcohol & Drug Program Executives; California Society of Addiction Medicine; Drug Policy Alliance; National Harm Reduction Coalition; Healthright 360, San Francisco AIDS Foundation; Tarzana Treatment Center
POSITION: Neutral

DESCRIPTION OF CURRENT LEGISLATION

This bill authorizes certain local governments to establish overdose prevention programs (OPP) within their respective jurisdiction. Further, the bill would protect a person or entity from certain civil, criminal administrative, and professional disciplinary liability for their good faith involvement in the operation of an OPP, as specified.

The bill specifies that the civil, administrative, and professional disciplinary protection does not pertain to actions performed in a grossly negligent manner or in bad faith. The language, however, allows the Medical Board of California (Board) and Osteopathic Medical Board of California to take disciplinary action against its licensees.

RECENT AMENDMENTS AND ACTION

On January 3, the bill was amended to update the sunset date for the program established by the bill to be January 1, 2028, and update co-authors.

On January 18, SB 57 was amended to require the jurisdictions that choose to participate in the program to select an independent entity to conduct a peer-reviewed study of the statewide efficacy of the program, to be submitted to the Legislature and the Governor's Office on or before January 15, 2027.

The recent amendments to SB 57 do not alter the Board's authority to take appropriate administrative or disciplinary action against licensees who fail to meet the standard of care in relation to the operation of an OPP.

BACKGROUND

Existing law, the Medical Practice Act, establishes the Board for the licensure and regulation of physicians and surgeons. Pursuant to current law and practice, the Board investigates every complaint received pertaining to its licensees, as appropriate, including cases relating to the quality of care provided to consumers. If warranted by the circumstances, and related evidence, licensees who do not adhere to the relevant

standard of care may receive discipline against their license, including probation, suspension, or revocation. For technical and/or minor violations of the law, the Board may issue a citation and fine.

Various provisions of law state that possession, use (or being in the same location with knowledge of the use), or owning or maintaining a place for the use, of controlled substances is a crime.

ANALYSIS

According to the author:

California is in the midst of an unprecedented overdose crisis that must be treated as a public health crisis. Since 2011, drug overdose has been the leading cause of accidental death among adults in California. Overdose prevention programs, also called supervised consumption services, are a necessary intervention to prevent overdose deaths. Approximately 165 OPPs exist in 10 countries, and they have been rigorously researched and shown to reduce health and safety problems associated with drug use, including public drug use, discarded syringes, HIV and hepatitis infections, and overdose deaths.

The bill includes various findings and declarations, including the following:

- OPPs are an evidence-based harm reduction strategy that allows individuals to consume drugs in a hygienic environment under the supervision of staff trained to intervene if the individual overdoses. OPPs also provide sterile consumption equipment and offer general medical advice and referrals to substance use disorder treatment, housing, medical care, and other community social services.
- Expresses the intent of the Legislature to prevent fatal and nonfatal drug overdoses, reduce drug use by providing a pathway to drug treatment, as well as medical and social services for high-risk drug users (many of whom are homeless, uninsured, or very low income), prevent the transmission of HIV and hepatitis C, reduce nuisance and public safety problems related to the public use of controlled substances, and reduce emergency room use and hospital utilization related to drug use.

SB 57 establishes a temporary program (until January 1, 2028) that allows the City and County of San Francisco, the City of Los Angeles, the County of Los Angeles, and the City of Oakland to establish an OPP within their respective jurisdictions. The bill establishes various requirements that an entity must comply with to operate an OPP, including, but not limited to:

- Provide a hygienic space to consume controlled substances under supervision of staff trained to prevent and treat drug overdoses.
- Provide sterile consumption supplies, collect used equipment, and provide secure hypodermic needle and syringe disposal services.

- Monitor participants for potential overdose and provide care as necessary to prevent fatal overdose.
- Provide access or referrals to substance use disorder treatment services, primary medical care, mental health services, and social services.
- Educate participants on preventing transmission of HIV and viral hepatitis.
- Provide overdose prevention education and access to or referrals to obtain naloxone hydrochloride or another overdose reversal medication approved by the United States Food and Drug Administration.
- Require all staff present during open hours be certified in cardiopulmonary resuscitation (CPR) and first aid.
- Require all staff present at the program during open hours be authorized to provide emergency administration of an opioid antagonist and be trained for administration of an opioid antagonist.

SB 57 requires the jurisdictions that choose to participate in the program to select an independent entity to conduct a peer-reviewed study of the statewide efficacy of the program, to be submitted to the Legislature and the Governor’s Office on or before January 15, 2027.

FISCAL: None

SUPPORT: The City of Oakland
 The City of San Francisco
 County of Los Angeles
 County Behavioral Health Directors Association of California
 Harm Reduction Coalition (partial list)

OPPOSITION: California Association of Code Enforcement Officers
 California State Sheriffs’ Association
 Peace Officers’ Research Association of California
 California District Attorney’s Association (partial list)

ATTACHMENT: [SB 57, Wiener - Controlled Substances: Overdose Prevention Program](#)
 Version: 01/18/22 – Amended

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 528
AUTHOR: Jones
BILL DATE: May 25, 2021, Amended
SUBJECT: Juveniles: Health Information Summary: Psychotropic
Medication
SPONSOR: California Academy of Child and Adolescent
Psychiatry
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION

This bill requires the California Department of Social Services (CDSS) to create an electronic health care portal, through which health care providers will be able to access health information included in a foster child or youth's health and education summary, as provided. The portal must also include completed and approved forms developed by the Judicial Council relating to the administration of psychotropic medication for specified dependent children and wards of the juvenile court.

The bill has not been amended since the prior Board meeting.

BACKGROUND

Current law sets forth the prioritization of the allegations received by Medical Board of California (Board). Specifically, Business and Professions Code (BPC) section 2220.05 includes the investigation of allegations pertaining to "repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to a minor without a good faith prior examination of the patient and medical reason therefor."

In 2015, the California State Auditor released a report regarding California's foster care system and found that the state and counties failed to adequately oversee the prescription of psychotropic medications to children in foster care. According to this report, the fragmented structure of the state's child welfare system has contributed to its failure to ensure it has the data necessary to monitor the prescription of psychotropic medications to foster children.

ANALYSIS

According to the author:

"[F]oster youth, some of our most vulnerable children, frequently change the health providers they see or the foster families they live with, for reasons beyond their control. Oftentimes, their changing lives lead to a loss of critical health records, such as the prescription of antidepressants, mood stabilizers, antipsychotics, and other psychotropic medications. Without a documented

record, any attempt to resume use of these medications is greatly complicated. This bill will create a universal electronic health care portal for foster youth, allowing them to stabilize and maintain their personal health regimen.”

The electronic health care portal required by the bill shall include health and education summary information for a child in foster care and forms required by the Judicial Council relating to the administration of psychotropic medication for certain children removed from the physical custody of their parent.

The bill further requires a foster care public health nurse to add and update the above-described information and requires health care providers to children in foster care to have access to that health care portal.

Impact to the Consumer Protection Mission of the Board

In addition to the benefit the bill provides to support continuity of care for such a vulnerable patient population, this bill may ease the Board’s access to medical records necessary to investigate possible violations of the Medical Practice Act with regard to children in foster care.

FISCAL: None for the Board

SUPPORT: California State Association of Psychiatrists
County Behavioral Health Directors Association of California

OPPOSITION: Service Employees International Union California

ATTACHMENT: [SB 528, Jones - Juveniles: Health Information Summary: Psychotropic Medication.](#)
Version: 05/25/21 – Amended

**MBC TRACKER II BILLS
1/31/2022**

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 2	Fong	Regulations: Legislative Review: Regulatory Reform	Dead	
AB 6	Levine	Health Facilities: Pandemics and Emergencies: Best Practices	Dead	
AB 29	Cooper	State Bodies: Meetings	Dead	
AB 32	Aguiar-Curry	Telehealth	Sen. Health	05/24/21
AB 54	Kiley	COVID-19 Emergency Order Violation: License Revocation	Dead	04/05/21
AB 225	Gray	Department of Consumer Affairs: Boards: Veterans: Military Spouses	Sen. BP&ED	06/28/21
AB 305	Maienschein	Veteran services: Notice	Senate Floor	08/26/21
AB 343	Fong	California Public Records Act Ombudsperson	Sen. Judiciary	05/24/21
AB 346	Sevarto	Privacy: Breach	Dead	
AB 370	Arambula	Ambulatory Surgical Centers	Dead	04/15/21
AB 381	Davies	Licensed Facilities: Duties	Dead	06/14/21
AB 410	Fong	Registered Nurses and Vocational nurses: Nurse Licensure Compact	Dead	03/25/21
AB 458	Kamlager	Importation of prescription drugs	Dead	03/23/21
AB 489	Smith	Medicine	Dead	
AB 513	Bigelow	Employment: Telecommuting Employees	Dead	03/17/21
AB 581	Irwin	Cybersecurity	Assembly Floor	01/24/22
AB 646	Low	Department of Consumer Affairs: Boards: Expunged Convictions	Assembly Floor	01/24/22
AB 657	Cooper	State Civil Service System: Personal Services Contracts: Pros	Senate G.O.	06/15/21
AB 658	Smith	Medicine: Examination	Dead	
AB 662	Rodriguez	Mental health: Dispatch and Response Protocols: Working Group	Senate Floor	04/28/21
AB 666	Quirk-Silva	Substance Use Disorder Workforce Development	Senate Floor	01/01/22
AB 703	Rubio	Open meetings: Local Agencies: Teleconferences.	Dead	04/29/21
AB 705	Kamlager	Health Care: Facilities: Medical Privileges	Dead	03/30/21
AB 714	Maienschein	Communicable Disease Reporting	Dead	03/11/21
AB 809	Irwin	Information Security	Dead	05/05/21

**MBC TRACKER II BILLS
1/31/2022**

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 810	Flora	Healing Arts: Reports: Claims Against Licensees	Dead	
AB 835	Nazarian	Hospital Emergency Departments: HIV Testing	Sen. Appropriation	07/12/21
AB 852	Wood	Nurse Practitioners: Scope of Practice	Sen. BP&ED	04/21/21
AB 858	Jones-Sawyer	Employment: Health Information Technology: Clinical Practice	Senate Floor	07/15/21
AB 864	Low	Controlled Substances: CURES Database	Dead	03/04/21
AB 882	Gray	Medi-Cal Physicians and Dentists Loan Repayment Act Program	Dead	04/15/21
AB 884	Patterson	State Agencies: Audits	Dead	
AB 885	Quirk	Bagley-Keene Open Meeting Act: Teleconferencing.	Dead	03/24/21
AB 935	Maienschein	Telehealth: Mental Health	Dead	04/19/21
AB 975	Rivas	Political Reform Act of 1974: Statement of Economic Interests & Gifts	Assembly Floor	05/18/21
AB 1026	Smith	Business Licenses: Veterans	Dead	
AB 1105	Rodriguez	Hospital Workers: COVID-19 Testing	Sen. Appropriations	06/30/21
AB 1120	Irwin	Clinical Laboratories: Blood Withdrawal	Assembly Floor	01/03/22
AB 1186	Friedman	California Hospice Licensure Act of 1990	Dead	
AB 1217	Rodriguez	Personal Protective Equipment Stockpile	Dead	04/08/21
AB 1236	Ting	Healing Arts: Licensees: Data Collection	Assembly Floor	04/29/21
AB 1252	Chau	Information Privacy: Digital Health Feedback Systems	Assembly Floor	04/12/21
AB 1264	Aguiar-Curry	Project ECHO (registered trademark) Grant Program	Dead	03/16/21
AB 1306	Arambula	Health Professions Careers Opportunity Program	Sen. Appropriations	06/16/21
AB 1308	Ting	Arrest and Conviction Record Relief	Sen. Public Safety	
AB 1328	Irwin	Clinical Laboratory Technology and Pharmacistst	Sen. Appropriations	07/14/21
AB 1343	Cooper	Controlled Substances: CURES Database	Dead	
AB 1386	Cunningham	License fees: military partners and spouses	Dead	04/28/21
AB 1400	Kalra	Guaranteed Health Care for All	Assembly Floor	01/24/22
AB 1429	Holden	State Agency Records: Mgmnt. Coord. Duties: Personnel Training	Sen. Appropriations	06/29/21
AB 1430	Arambula	Pharmacy : Dispensing: Controlled Substances	Dead	04/21/21

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BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 1436	Chau	Information Practices Act of 1977	Sen. Appropriations	07/16/21
AB 1494	Fong	Blood Banks: Collection	Dead	04/29/21
AB 1604	Holden	The Upward Mobility Act of 2022	Assm. Pub Employees	
AB 1618	Aguiar-Curry	Alzheimer's Disease	Assm. Health	
AB 1627	Ramos	Opioid Overdose Prevention	Assm. Health	
AB 1628	Ramos	Online Platforms: Electronic Content Management: Controlled Substances	Assm. Privacy/Cons. Prot.	
AB 1635	Nguyen	Suicide Prevention: Mental Health Provider Educational Loan Repayment	Assm. B&P	
AB 1669	Cunningham	Ca. Internet Consumer Protection: veterans telehealth applications		
AB 1673	Seyarto	California Fentanyl Abuse Task Force		
SB 40	Hurtado	Health Care Workforce Development: Ca Medicine Scholars Program	Assm. Approps	06/28/21
SB 75	Bates	Controlled Substances: Fentanyl	Dead	03/03/21
SB 102	Melendez	COVID-19 Emergency Order Violation: License Revocation	Dead	03/17/21
SB 349	Umberg	California Ethical Treatment for Persons w/Substance Abuse Act	Assembly Floor	07/14/21
SB 377	Archuleta	Radiologist Assistants	Dead	
SB 402	Hurtado	Multipayer Payment Reform Collaborative	Assm. Approps	06/14/21
SB 422	Pan	Personal Services Contracts: State Employees: Phys. & Pro Registry	Assembly Floor	
SB 430	Borgeas	Small Businesses: Reduction or Waiver of Civil Penalties	Dead	
SB 441	Hurtado	Health Care Workforce Training Programs: Geriatric Medicine	Assm. Approps	03/22/21
SB 460	Pan	Long-term Health Facilities: Patient Representatives	Senate Floor	03/16/21
SB 492	Hurtado	Maternal Health	Senate Floor	04/19/21
SB 519	Wiener	Controlled Substances: Hallucinogenic Substances	Assm. Approps	08/16/21
SB 543	Limon	State Agencies: Nonprofit Liaison	Assembly Desk	05/20/21
SB 605	Eggman	Medical Device Right to Repair Act	Dead	04/29/21
SB 642	Kamlager	Health Care Facilities: Medical Privileges	Dead	05/03/21
SB 652	Bates	Dentistry: Use of Sedation: Training	Senate Floor	05/11/21
SB 681	Ochoa Bogh	Child Abuse Reporting: Mandated Reports	Dead	03/23/21
SB 711	Borgeas	Patient Access to Health Records	Senate Rules	

MBC TRACKER II BILLS
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BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 731	Durazo	Criminal Records: Relief	Assembly Floor	09/02/21
SB 772	Ochoa Bogh	Professions and Vocations: Citations, Minor Violations	Dead	
SB 787	Hurtado	California State University Program in Medical Education	Dead	
SB 858	Wiener	Health Care Service Plans: Discipline: Civil Penalties	Senate Rules	
SB 866	Wiener	Minors: Vaccine Consent	Senate Rules	
SB 871	Pan	Public Health: Immunizations	Senate Rules	
SB 872	Dodd	Pharmacies: Mobile Units	Senate Rules	