

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 815
AUTHOR: Roth
BILL DATE: May 25, 2023, Amended
SUBJECT: Healing Arts
SPONSOR: None
POSITION: Support, if Amended

DESCRIPTION OF CURRENT LEGISLATION

This is the sunset bill for the Medical Board of California (Board) and includes various statutory changes requested by the Board, most notably, physician fee increases and the establishment of a complainant liaison unit.

RECENT AMENDMENTS

On May 25, 2023, SB 815 was amended, as follows:

- Decreased the proposed physician and surgeon fee amount from \$1,350 to \$1,289. Clarified that the start date of the new fee amount is January 1, 2024.
- Corrected drafting errors that referred to the Board of Pharmacy.

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. The current sunset date for the Board is January 1, 2024.

In December 2022, the Board approved its [Sunset Review Report](#), which contained various statutory requests for the Legislature to consider enacting into law, which are discussed in priority order in Section 12, New Issues.

ANALYSIS

The bill provides for the following:

1. Extends the Board's sunset date by four years, to January 1, 2028.
2. Adds two public members to the Board to create a public-member majority.
3. Requires creation of a complainant liaison unit, with specified duties.
4. States that a postgraduate training license (PTL) shall be valid for a 36-month period after issuance.

5. Requires, for all quality-of-care complaints, that the complainant, patient, or patient representative be interviewed before a case is referred for a field investigation.
6. Tolls the statute of limitations when seeking to enforce a subpoena for medical records against a licensee.
7. Requires pharmacy records to be provided to the Board within three days of a Board request.
8. States that for certain felony convictions, the Board does not require an expert witness to prove the relationship between that conviction and the practice of medicine.
9. States that the following actions constitute unprofessional conduct:
 - a. Not sitting for an investigational interview within 30 days after notification by the Board.
 - b. Any action by the licensee, or someone acting on their behalf, intended to cause their patient or the patient's representative to rescind their consent to release medical records.
 - c. Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.
10. Requires a physician to maintain patient records for at least seven years after the last date of service to their patient.
11. Increases wait times for those petitioning the Board for penalty relief (i.e., modify probation terms or license reinstatement); automatic denial of a petition to modify/terminate probation if the Board files a petition to revoke probation.
12. Authorizes the Board to establish a fee to be paid by a petitioner seeking license reinstatement or modification of their probation.
13. Requires the Board to provide a statement from a complainant to the Board's disciplinary panels, when relevant.
14. Requires expert witness reports to be exchanged 90 days prior to a hearing before an administrative law judge (ALJ).
15. Establishes a bifurcated burden of proof related to enforcement and certain initial licensure decisions.
16. Authorizes the Board to distribute physician renewal applications electronically and restricted ability to ask certain questions related to physician disorders on those applications.
17. Increases the physician initial and renewal license fees to \$1,350.
18. Eliminates the language that limits the Board's reserves to four months' operating expenses.
19. Transfers the regulation of research psychoanalysts to the Board of Psychology.
20. Includes various technical licensing and enforcement changes requested by the Board.

Staff Comments on the Current Language

As currently drafted, SB 815 reflects various Board requests and priorities from the 2022 Sunset Report, including the highest Board priorities: a substantial fee increase, direction to establish a complainant liaison unit, and a four-year sunset extension.

Based upon the numbered items above, staff offer the following comments and suggested changes for the Board to consider:

No. 2 – Public Member Majority

Changing the composition of the Board to a public-member majority is a priority for the Board. However, the Board's requested approach is contained with [AB 2060 of 2022](#), which was sponsored by the Board. Staff recommend seeking to change the language to conform with the Board's approved language which would keep the overall number of members the same and update the composition of the Board's disciplinary panels. Adding two additional members will increase the cost to the Board for travel and per diem, whereas the Board's sponsored language was cost neutral.

No. 4 – Reinstating a 36-month Postgraduate Training License

The bill includes the language requested by the Board so that a PTL is valid for a 36-month period after issuance. To provide the same benefits to current PTL holders, staff suggest making these provisions retroactive. This would cause all expiration dates for current licensees to be automatically extended out to 36 months from the date their PTL was issued. The staff workload associated with this change is expected to be minor and absorbable.

No. 5 – Interviews for Quality-of-Care Complaints

This proposal amends [Business and Professions Code \(BPC\) section 2220.08](#), which sets forth the requirements for a [Board medical consultant](#) to review a quality-of-care complaint to determine if it is appropriate for a field investigation. The language in SB 815 would require all such reviews to include an interview with the complainant, patient, or patient representative before it is referred for a field investigation. This would include cases that, under current law, would already be referred to the field.

In lieu of the approach currently in the bill, staff suggest instead that a separate statute be enacted to require the interview to occur before a case may be closed. Under this approach, cases that currently qualify for a field investigation (which is typically when an interview happens) would not be delayed. In addition, staff recommend defining "patient representative" as a spouse, domestic partner, another person responsible for the care of the patient, or next of kin.

Regardless of the approach, the Board would require additional staff resources to fulfill these responsibilities and it would lengthen the amount of time required to process and close complaints that do not meet the Board's burden of proof.

No. 8 – Expert Witnesses and Felony Convictions

This proposal is intended to relieve the Board of any need to use an expert witness to prove the relationship between certain types of felonies committed by a licensee and the practice of medicine. The proposal describes felonies related to certain topics (e.g., moral turpitude, dishonesty, corruption) that would qualify. As drafted, however, it presents certain technical challenges that should be addressed to meet its intended purpose. For example, it includes a specific appeal process for revoked licensees that is different than licensees revoked through the administrative hearing process. Also, the language does not prohibit a respondent licensee from bringing their own expert witnesses, which if that occurred, the Board may require its own expert witness.

Therefore, staff suggest the following amendments:

- Rather than use the descriptions of certain types of felonies, specify certain sections of the Penal Code (or in other codes, as appropriate) that would qualify. This will help ensure clarity for the Board and its licensees on which felony violations are relevant.
- Recast the rest of the related language in the bill with the following effects:
 - State that with respect to the specific felony violations, that if the licensee seeks an administrative hearing to contest being disciplined pursuant to their felony conviction that an ALJ shall not permit or give any weight to expert testimony regarding whether the conviction is substantially related to the practice of medicine and that the only purpose of the hearing is to determine the degree of discipline to be imposed.

No. 13 – Providing Complainant Statements to the Board's Disciplinary Panels

This would amend [BPC section 2330](#) to require a statement from the complainant to be provided to, and considered by, a disciplinary panel of the Board, where relevant. This code section includes the Board of Podiatric Medicine, and possibly other licensing boards. The proposal does not make clear whether these statements would be subject to legal review through the administrative adjudication process that the Board is required to follow.

To avoid potential legal challenges (and the related delays and increased legal costs), staff suggest recasting this proposal in a new code section that would do the following:

- At the time that a complaint has been referred for a field investigation, require the Board to ask the relevant complainant, or their representative¹, to provide a statement for the members of the Board to consider, relative to the harm they have experienced.
- Set a 60-day deadline for the complainant or representative to provide such a statement.
- Provide that the statement shall be subject to discovery by the respondent licensee and legal review, pursuant to existing law.
- Clarify, as necessary, that these provisions only apply to the Board.

This alternative approach is expected to reduce certain legal challenges but could lead to a decrease in the number of cases resolved through a stipulated settlement, if the respondent challenges the content of the statement. If so, the Board may face a higher volume of cases that are heard before an ALJ, which would increase legal costs and enforcement timeframes for those cases. Other Board costs associated with this alternative approach are expected to be minor and absorbable.

No. 15 – Burden of Proof Changes

The Board proposed to reduce the burden of proof for its disciplinary actions from clear and convincing evidence, per current case law, to preponderance of the evidence. The current burden of proof for a statement of issues for a licensing application or a Board petition to revoke probation is preponderance of the evidence.

The bill language proposes to bifurcate the Board's burden of proof and is intended to maintain the clear and convincing standard for matters related to license suspension or revocation and move to preponderance of the evidence for all other disciplinary outcomes.

It is not clear how this proposal would work in practice, as the Board does not predetermine a desired disciplinary outcome at the outset of an investigation. Those decisions are made by the Board, following the development of a stipulated settlement or the matter has been adjudicated before an ALJ. The impact on Board operations, including costs, has not been determined.

In the meantime, Board staff suggest the following technical amendments:

¹ To include spouse, domestic partner, another person responsible for the care of the patient, or next of kin.

- Remove references to a statement of issues or specify that the standard of proof to deny a license is preponderance of the evidence.
- Clarify that any statute changes do not impact the requirements related to proving that a licensee has violated the terms of their probation or specify that the standard of proof to revoke probation is preponderance of the evidence.

In general, moving to a preponderance of evidence standard is expected to decrease enforcement timeframes for some cases and increase the volume of cases that qualify for discipline.

No. 16 – Changes to Renewal Applications

This would eliminate the requirement that the Board issue paper-based renewal applications, which could allow the Board, in time, to further streamline its operations.

Further, it would change the Board’s authority to ask questions about any disorder the physician may have that impairs their ability to practice medicine safely. The Board does not currently ask any such questions on its renewal application (only on initial applications); therefore, this would not change the Board’s practices. No changes are suggested for this section.

No. 17 – Physician Fee Increases

This is the Board’s proposal. Staff recommend the following technical amendments:

- Remove obsolete language related to a 2012 financial audit of the Department of Finance.

No. 19 – Transfer of the Research Psychoanalyst Program to the Board of Psychology

This is a Board proposal. In discussion with the staff of the Board of Psychology, Board staff recommend a two-year delayed implementation to successfully complete the transfer of this program.

Consideration of a Board Position

The Board adopted a Support, if Amended position on May 18, 2023. Board staff expect the currently proposed physician fee amount of \$1,289 is sufficient to meet the Board's projected financial needs, contingent upon an extended loan repayment term.

Consequently, no action by the Board is required at this time.

FISCAL: Minor one-time costs; approximately \$1.6 million in ongoing expenses for new staff to support workload related to the Complainant Liaison Unit, conducting complainant interviews

regarding their quality-of-care complaints, and expenses related to adding two additional Board members.

The anticipated revenue increase is estimated to be between \$7.9M and \$15.8M in Fiscal Year 22-23 and \$31.9M in future years and, contingent upon an extended loan repayment term, is expected to accommodate any new potential enforcement-related cost increases.

SUPPORT: Osteopathic Medical Board (if amended)

OPPOSITION: California Medical Association (unless amended)

ATTACHMENT: [SB 815, Roth – Healing Arts.](#)
Version: 5/25/23 – Amended

0758 - Medical Board Fund Analysis of Fund Condition

(Dollars in Thousands)

Senate Bill 815

2023-24 Governor's Budget (with Fee Increase to \$1,289 Effective 1/1/24)

w/ 2022-23 Revenue and Expenditure projections through Fiscal Month 10

	Actual 2020-21	Actual 2021-22	CY 2022-23	BY 2023-24	BY +1 2024-25	BY +2 2025-26	BY +3 2026-27	BY +4 2027-28	BY +5 2028-29
BEGINNING BALANCE	\$ 18,919	\$ 7,940	\$ 6,606	\$ 7,494	\$ 8,096	\$ 13,122	\$ 17,508	\$ 20,477	\$ 21,932
Prior Year Adjustment	\$ -1,116	\$ 1,204	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 17,803	\$ 9,144	\$ 6,606	\$ 7,494	\$ 8,096	\$ 13,122	\$ 17,508	\$ 20,477	\$ 21,932
REVENUES, TRANSFERS AND OTHER ADJUSTMENTS									
Revenues									
4121200 - Delinquent fees	\$ 130	\$ 132	\$ 143	\$ 137	\$ 139	\$ 140	\$ 141	\$ 142	\$ 143
4121200 - Delinquent fees increase (effective 1/1/24)	\$ -	\$ -	\$ -	\$ 16	\$ 64	\$ 64	\$ 65	\$ 66	\$ 67
4127400 - Renewal fees	\$ 52,793	\$ 54,415	\$ 57,535	\$ 56,835	\$ 57,404	\$ 57,978	\$ 58,558	\$ 59,144	\$ 59,735
4127400 - Renewal fees increase (effective 1/1/24)	\$ -	\$ -	\$ -	\$ 7,407	\$ 29,922	\$ 30,221	\$ 30,523	\$ 30,828	\$ 31,136
4129200 - Other regulatory fees	\$ 481	\$ 508	\$ 588	\$ 436	\$ 441	\$ 445	\$ 449	\$ 453	\$ 458
4129400 - Other reg licenses & permits	\$ 6,278	\$ 8,647	\$ 10,674	\$ 8,982	\$ 9,071	\$ 9,162	\$ 9,254	\$ 9,347	\$ 9,440
4129400 - Other reg licenses & permits increase (effective 1/1/24)	\$ -	\$ -	\$ -	\$ 473	\$ 1,910	\$ 1,929	\$ 1,948	\$ 1,967	\$ 1,987
4163000 - Income from surplus money investments	\$ 138	\$ 62	\$ 323	\$ 159	\$ 257	\$ 343	\$ 402	\$ 430	\$ 427
4171400 - Escheat of unclaimed checks and warrants	\$ 40	\$ 39	\$ 18	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4172500 - Miscellaneous revenues	\$ 4	\$ 5	\$ 4	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10	\$ 10
4173000 - Penalty Assessments	\$ 50	\$ 135	\$ 45	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25	\$ 25
4173500 - Settlements and Judgements - Other	\$ 27	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 59,941	\$ 63,943	\$ 69,330	\$ 74,480	\$ 99,243	\$ 100,317	\$ 101,375	\$ 102,412	\$ 103,428
Loan from Fund (0421) per CS 14.00, Budget Act of 2021	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Transfers To General Fund 0001 per EO E 21/22 - 276 (AB 84)	\$ -	\$ -2,790	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Proposed loan from Fund (0421) per CS 14.00, Budget Act of 2022	\$ -	\$ -	\$ 8,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Proposed Budget Act Loan from Fund 0421 (six year payback)	\$ -	\$ -	\$ -	\$ 27,000	\$ -	\$ -	\$ -	\$ -	\$ -
Loan from Fund (0421) per CS 14.00, Budget Act of 2023	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loan Repayment per CS 14.00, Budget Act of 2021	\$ -	\$ -	\$ -	\$ -10,160	\$ -	\$ -	\$ -	\$ -	\$ -
Loan Repayment per CS 14.00, Budget Act of 2022	\$ -	\$ -	\$ -	\$ -8,230	\$ -	\$ -	\$ -	\$ -	\$ -
Proposed Budget Act Loan Repayment	\$ -	\$ -	\$ -	\$ -	\$ -5,275	\$ -5,146	\$ -5,017	\$ -4,887	\$ -4,758
Totals, Transfers and Other Adjustments	\$ -	\$ 7,210	\$ 8,000	\$ 8,610	\$ -5,275	\$ -5,146	\$ -5,017	\$ -4,887	\$ -4,758
TOTALS, REVENUES, TRANSFERS AND OTHER ADJUSTMENTS	\$ 59,941	\$ 71,153	\$ 77,330	\$ 83,090	\$ 93,968	\$ 95,172	\$ 96,358	\$ 97,525	\$ 98,670
TOTAL RESOURCES	\$ 77,744	\$ 80,297	\$ 83,936	\$ 90,584	\$ 102,064	\$ 108,293	\$ 113,866	\$ 118,002	\$ 120,602
Expenditures:									
1111 DCA Regulatory Boards, Bureaus, Divisions (State Ops)	\$ 65,791	\$ 68,788	\$ 73,614	\$ 79,143	\$ 81,517	\$ 83,963	\$ 86,482	\$ 89,076	\$ 91,748
Estimated Unscheduled Cost Recovery	\$ -	\$ -	\$ -2,786	\$ -1,772	\$ -1,825	\$ -1,880	\$ -1,936	\$ -1,994	\$ -2,054
Estimated Cost for future Legislative and/or Board Proposals	\$ -	\$ -	\$ -	\$ -	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000
9892 Supplemental Pension Payments (State Ops)	\$ 685	\$ 685	\$ 685	\$ 685	\$ 685	\$ -	\$ -	\$ -	\$ -
9900 Statewide Administrative Expenditures (Pro Rata)	\$ 3,328	\$ 4,218	\$ 4,929	\$ 4,432	\$ 4,565	\$ 4,702	\$ 4,843	\$ 4,988	\$ 5,138
TOTALS, EXPENDITURES AND EXPENDITURE ADJUSTMENTS	\$ 69,804	\$ 73,691	\$ 76,442	\$ 82,488	\$ 88,942	\$ 90,785	\$ 93,389	\$ 96,070	\$ 98,832
FUND BALANCE									
Reserve for Economic Uncertainties	\$ 7,940	\$ 6,606	\$ 7,494	\$ 8,096	\$ 13,122	\$ 17,508	\$ 20,477	\$ 21,932	\$ 21,770
Months in Reserve	1.3	1.0	1.1	1.1	1.8	2.3	2.6	2.7	2.6

NOTES:

Assumes workload and revenue projections are realized in BY and ongoing.
 Assumes revenue growth of one percent in BY+1 and ongoing.
 A three percent modifier is included in BY+1 and ongoing for anticipated growth in Employee Compensation & Retirement expenditures.
 Control Section 14.00 loan interest is estimated based on the rate accruing in the Pooled Money Investment Fund at the time of each loan.