

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 408
AUTHOR: Berman
BILL DATE: April 21, 2025, Amended
SUBJECT: Physician Health and Wellness Program
SPONSOR: Medical Board of California

DESCRIPTION OF CURRENT LEGISLATION

Authorizes the Medical Board of California (Board) to establish a Physician Health and Wellness Program (PHWP) for the early identification of, and appropriate interventions to support, treat, monitor, and rehabilitate applicants and licensees of the Board who have impairing or potentially impairing physical or mental health conditions, including substance use disorders, that may impact their ability to practice their profession in a reasonably safe, competent, and professional manner.

The proposed legislation provides the Board with new authority to prevent patient harm from occurring, without requiring the filing of a complaint. As with current law, those who participate in the PHWP pursuant to a probationary order from the Board will be subject to the [Uniform Standards for Substance-Abusing Licensees](#).

AB 408 does **not** mandate that anyone participate in the PHWP, unless required pursuant to a disciplinary order. Otherwise, participation is voluntary.

RECENT AMENDMENTS

On March 24, 2025, AB 408 was amended to replace the intent language with language consistent with the Board's prior direction. On April 21, 2025, the bill was amended to make technical and clarifying changes to the provisions related to confidentiality of PHWP records (in the proposed Business and Professions Code (BPC) section 2346) and civil immunity (in the proposed BPC section 2347).

BACKGROUND

During the November 21-22, 2024, meeting, the Board approved a motion that directed staff to work with the Legislature to find an author for its [PHWP proposal](#) and authorized President Lawson and Vice President Healzer to work with staff, the Legislature, and other stakeholders in furtherance of the proposal.

[BPC sections 315-315.4](#) established in the Department of Consumer Affairs (DCA) the Substance Abuse Coordination Committee (SACC). The SACC is charged with formulating uniform and specific standards in various areas that a healing arts board shall use in dealing with substance-abusing licensees. The Board incorporated those [standards into its regulations in 2015](#).

[BPC section 820](#) authorizes a healing arts licensing board within DCA to order a licensee to be examined by a physician or psychologist if it appears that the licensee may be unable to practice safely due to their mental or physical health condition. A report of such an examination shall be made available to the licensee and the approved licensing board and may be used in a disciplinary proceeding.

Legislative Progress and Next Steps

AB 408 was heard and approved on Tuesday, April 22, 2025, in the Assembly Business & Professions Committee on a vote of 16-0 (two legislators not voting), and on April 29, 2025, in the Assembly Judiciary Committee on a vote of 10-0 (two legislators not voting).

The bill is scheduled to next be heard in the Assembly Committee on Appropriations on Wednesday, May 14, 2025. If approved, it would then be considered by the full Assembly, and if approved by a majority of Assemblymembers, the bill would move to the Senate.

The key remaining [legislative deadlines for 2025](#) include:

- May 23: Deadline for Appropriations committees to approve bills introduced in their house.
- June 6: Deadline for each house to approve bills introduced in that house.
- July 18: Deadline for policy committees to meet; start of the Legislature's Summer Recess.
- August 18: Legislature reconvenes from Summer Recess.
- August 29: Deadline for fiscal committees to approve bills.
- September 12: Legislature's Interim Recess begins upon adjournment.
- October 12: Deadline for the Governor to sign or veto bills.

ANALYSIS

AB 408 repeals the existing authority to establish a PHWP in BPC sections 2340 to 2340.8 and replaces it with the following sections that are summarized below:

BPC section 2340

- Establishes the vision for the program: Protecting consumers by addressing impairing, or potentially impairing, health conditions that may impact a current or

future licensee's ability to practice in a reasonably safe, competent, professional manner.

- Defines various terms, including, but not limited to:
 - Administering entity.
 - Applicants, prospective applicants, trainees, and students.
 - Mental/physical illness.
 - Disruptive behavior.
 - Substance use disorder.
 - Voluntary participant.

BPC section 2341

- A PHWP established by the Board shall do all the following:
 - Educate the public, licensees, applicants, prospective applicants, trainees, students, health facilities, medical groups, health care service plans, health insurers, and other relevant organizations on specified topics.
 - Establish relationships supportive of the program with professionals experienced in working with health care providers to provide education, evaluation, monitoring, or treatment services.
 - Receive and assess reports of suspected impairment from any source.
 - Intervene in cases of verified impairment or suspected impairment, as well as in cases where the individual has a condition that could lead to impairment if left untreated.
 - Upon reasonable cause, refer participants for evaluation, treatment, monitoring, or other appropriate services.
 - Provide consistent and regular monitoring, care management support, or other appropriate services for program participants.
 - Advocate on behalf of participants, with their consent, to the board to allow them to participate in the program as an alternative to disciplinary action, when appropriate.
 - Offer guidance on participants' fitness for duty with current or potential workplaces, when appropriate.
 - Perform other services as agreed between the program and the Board.
- Exempts the Board and PHWP from being mandated to impose or follow the Uniform Standards upon voluntary participants. The Board would still be mandated to impose the Uniform Standards upon participants referred through the disciplinary process.
- Licensees with a probation order that includes the Uniform Standards must follow that order. The PHWP shall provide the evaluations, treatment, monitoring, and reports required by that order.

BPC section 2342

- If the Board establishes a PHWP, it shall contract with a 501(c)(3) non-profit organization, referred to as the administering entity, with leadership, expertise, and experience in impairment/rehabilitating healthcare providers. The section also streamlines the process to obtain a multi-year contract.
- The administering entity shall do the following:
 - Engage with a national treatment network.
 - Refer participants and others affiliated with the participants to appropriate services.
 - Make services available to all Board licensees, applicants, prospective applicants, trainees, students, including those who self-refer.
 - Make prompt and diligent efforts to contact, evaluate, and enroll appropriate participants.
 - Provide immediate confidential reporting to the Board of withdrawals/terminations prior to program completion.
 - Provide regular communication with the Board.
 - Participate in Board meetings.
 - Submit reports with statistical information (as requested by the Board) and those pertaining to participants and other individuals, as required.
 - Comply with periodic quality and compliance evaluations by an independent third-party selected by the Board.

BPC section 2343

- A contract between the Board and an administering entity would be required to include procedures on the following topics:
 - Regular participation in Board meetings and regular reporting of statistical information to the Board.
 - Periodic joint reviews of referrals made to the PHWP.
 - Various reporting requirements to the Board, including, but not limited to, participants who commit a program violation, fail to cooperate with the program, or in the opinion of the PHWP are a danger to the public.
 - Informing participants of PHWP procedures, responsibilities, and consequences of noncompliance.
 - Qualifications of those who serve participants.
 - Prevention of conflicts of interest.
 - Quality assurance and improvement principles.
 - Maintenance and confidentiality of records.
 - PHWP staff contacts.
 - Data collection and analysis.
 - Research process and methodologies.
 - Education and outreach to stakeholders.

- Monitoring and accountability for licensees who practice across state lines.
- Notification, compliance, and cures to program deficiencies.
- Other relevant topics determined by the Board.

BPC section 2344

- The Board would be authorized to refer a licensee to the PHWP in lieu of discipline, with the consent of the licensee. If the licensee does not consent or does not successfully complete the program, the Board may proceed with appropriate disciplinary action, as authorized under current law.
 - Referring in lieu of discipline is not an option for those alleged to have harmed a patient or client or engaged in sexual misconduct.
- Participants shall be responsible for PHWP costs, but payment from other sources is authorized.
- Services for participants shall be conducted by approved providers with expertise working with health care professionals with impairing or potentially impairing conditions.
- When the Board receives a required report that a deidentified voluntary participant has committed a program violation, the Board may:
 - Encourage continued participation in lieu of discipline, if appropriate.
 - Request the participant's identity, contact information, and a factual summary of events and findings from the PHWP, and begin an investigation and take appropriate disciplinary action.
 - Take other action consistent with the procedures established in the contract.
- Participants must authorize the release of information to the Board, as specified.
- The PHWP shall make the required reports to the Board in the following circumstances:
 - A participant fails to comply with the program or the PHWP determines that they are unable to practice in a reasonably safe, competent, and professional manner.
 - A licensee, applicant, or trainee (as defined) fails to enter the program and the PHWP determines are unable to practice in a reasonably safe, competent, and professional manner.

- A licensee, applicant, or trainee (as defined) is required to notify the Board that they withdrew or were terminated from the program without completing the requirements) within three days of that occurrence.
- Participants who leave the PHWP due to noncompletion may re-enroll with the agreement of the Board and the PHWP.
- The Board maintains the authority to discipline participants or to deny a licensure application to a participant who withdraws or is terminated from the program, including, but not limited to, ordering an evaluation of an illness that impacts their competency.

BPC section 2345

Provides that participants must execute a written agreement with the PHWP that includes, at least, all the following:

- A jointly agreed upon treatment plan, including conditions and procedures to monitor compliance. Compliance with a probationary order of the Board shall be included in the agreement, if relevant.
- Criteria for:
 - Compliance with the terms and conditions.
 - Program completion and termination.
 - When a report due to noncompliance will be made to the Board
- An agreement to authorize communication between the PHWP, Board, or others, as appropriate.
- An acknowledgment of the following:
 - Withdrawal or termination prior to completion will be reported to the Board.
 - The PWHP is required to make reports to the Board when a participant withdraws or is terminated from the program, or is unable to practice in a reasonably safe, competent, professional manner.
 - Participation in the PHWP is not a defense to a disciplinary or licensing action of the Board.
 - The participant is responsible for PHWP costs, but they may be paid by other sources.

BPC section 2346

- Provides that program records are exempt from the California Public Records Act and not subject to discovery by subpoena or admissible as evidence except:

- To defend the PHWP in certain civil or administrative actions related to the participant.
- If records must be provided to the Board under the laws that establishes the PHWP.
- Records held by the Board may be used as evidence in a licensing or disciplinary action.

BPC section 2347

- States that anyone who acts in good faith related to the PHWP is immune from civil liability, including:
 - The administering entity, the Board (and related members, employees, and agents) and advisory committees.
 - Those reporting an impaired person or provides information about someone to the PHWP/Board.
- This section does not require the Board to defend or indemnify someone in a civil action, unless otherwise required by law.
- The immunity does not apply in a case where it can be proven that someone made a report they knew was false, or with a reckless disregard of the truth or falsity of the report.

BPC section 2348

- This section authorizes the Board to establish one or more advisory committees to assist the Board to carry out its duties related to the PHWP. The advisory committees shall operate under the direction of the Board's executive director or their designee, as follows:
 - Appointments are by majority vote of the Board for up to four years, with at least three members per committee.
 - Committee members must be unaffiliated with the PHWP (or its contractors).
 - Provides for the following committee member qualifications:
 - At least one non-Board licensee knowledgeable in a Board-recognized field related to substance use disorders or mental or physical illness.
 - Any licensee appointed shall be experienced in evaluating/managing impaired health care professionals.
 - At least one licensee appointed shall specialize in diagnosis/treatment of substance use disorders in health care professionals.

- The section authorizes a committee to meet in closed session to review information related to PHWP participants, those being considered for entry into the program, or to hear reports from the PHWP about a participant. Further, the section states that committee members shall receive per diem and expense reimbursement.

BPC section 2349

- Advisory committees are authorized to have the following duties and responsibilities:
 - Evaluate licensees for possible referral to the PHWP in lieu of discipline and make related recommendations to the Board's executive director or their designee.
 - Review information about participants, including those reported to the Board, and make related recommendations to the Board's executive director or their designee.
 - Make recommendations to the Board's executive director or their designee whether a participant should be reported to the Board or that the PHWP should take other action(s).
 - Consider requests of potential participants or other matters requested by the Board.
 - Periodically hold open meetings to evaluate the PHWP, prepare reports to the Board, and consider PHWP changes or other matters requested by the Board.
- The section provides Board and committee members (including agents and contractors) immunity from civil damages due to acts or omissions while acting in good faith.

BPC section 2350

- This section continues the existing PHWP Program Account for the purpose of holding funds collected or allocated by the Board for the support of the PHWP. It provides that those funds shall be available upon appropriation by the Legislature.
- The Board is authorized to seek and use grant funds and gifts of financial support from public or private sources and requires annual reporting to the Legislature (including upon request of the public) the amounts and source of funds received to support the program.

BPC section 2351

- If the Board establishes a PHWP, licensees would be required to make a report to the Board or PHWP if they, in their good faith judgment, believe another

licensee may be impaired. PHWP staff and agents are exempt from this requirement in situations where the licensee in question does not pose a risk to patient safety.

- Prohibits disclosure of the reporter's name to the referred licensee, unless the reporter provides written permission, or disclosure is otherwise required by law.

BPC section 2352

- States that these laws are not applicable to the Osteopathic Medical Board of California or their licensees, applicants, prospective applicants, students, or trainees.

FISCAL: No costs are mandated by AB 408, as the bill authorizes, but does not require establishing a PHWP. The costs to fund the contract with the administering entity are undetermined.

SUPPORT: Amer. College of Obstetricians and Gynecologists, District IX/CA
California Academy of Child and Adolescent Psychiatry
California Dental Association
California Medical Association
California Orthopedic Association
California Public Protection & Physician Health
California Society of Addiction Medicine
California Society of Anesthesiologists
California Society of Dermatology and Dermatologic Surgery
California Society of Pathologists
Center for Professional Recovery
Dr. Lorna Breen Heroes' Foundation.
Dr. David Kan
Drug Policy Alliance
Federation of State Physician Health Programs
SEIU California
Union of American Physicians and Dentists

OPPOSITION: Consumer Protection Policy Center, USD Law School Law
Consumer Watchdog
Disability in Medicine Mutual Mentorship Program
Stanford Medicine Alliance for Disability Inclusion and Equity

ATTACHMENT: [AB 408, Berman – Physician Health and Wellness Program.](#)
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