



MEDICAL BOARD OF CALIFORNIA

Protecting consumers by advancing high quality, safe medical care.

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Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

April 26, 2023

The Honorable Richard D. Roth, Chair
Senate Committee on Business, Professions and Economic Development Committee
1021 O Street, Room 3320
Sacramento, CA 95814

The Honorable Marc Berman, Chair
Assembly Committee on Business and Professions
1020 N Street, Room 379
Sacramento, CA 95814

Dear Senator Roth and Assemblymember Berman:

On behalf of the Medical Board of California (Board), we are pleased to provide the attached responses to the questions posed in the Board's Sunset Review background paper.

As discussed at our recent Sunset Review Oversight Hearing, the Board's highest priorities this year are 1) restoring the Board's financial stability and 2) establishing a new staff unit to help guide consumers through the complaint process and improve public understanding of the Board's mission and enforcement programs and processes.

Achieving these key goals requires a substantial increase in the fees charged to the Board's physician licensees. We appreciate that Senate Bill 815 (Roth) was approved by the Senate Committee on Business, Professions, and Economic Development on April 24, with amendments to include the fee amount requested by the Board and language to establish the creation of a Complainant Liaison Unit.

We look forward to working with you both, and the rest of the Legislature, this year to ensure that the Board has the adequate funds and legal tools to pursue its consumer protection mission.

In case of questions about these responses, please contact Aaron Bone, Chief of Legislation and Public Affairs at (916) 274-6251 or aaron.bone@mbc.ca.gov.

Sincerely,



Kristina Lawson, JD
Board President



Randy Hawkins, MD
Board Vice-President

Cc: Members, Medical Board of California

ISSUE #1: (BOARD COMPOSITION.) Does MBC’s composition need to be updated to include additional members of the public? What is the actual role of Medical Board of California board members in the disciplinary process? What benefit would be achieved by adding additional members of the public to the Medical Board of California, specifically in regards to the disciplinary process?

Staff Recommendation: MBC should provide information about how this change would make MBC more effective and successful.

Board Response (April 2023):

Although the Medical Board of California (Board) vigorously disagrees with those who assert that the Board is not focused on its mission, the Board recognizes that some members of the public have a perception that a physician-majority Board favors licensees in Board policies and disciplinary decisions.

When making decisions on whether to adopt, non-adopt, or seek to modify proposed decisions or proposed stipulations, Board members cast their individual votes following review of case information. The outcome of a case is a collective decision based on majority vote.

In the Board’s experience, both well-qualified physicians and public members have a vested and shared interest in furthering the Board’s mission of consumer protection, rehabilitating licensees when not inconsistent with consumer protection, and following the law. Nonetheless, changing the composition of the Board to a public-member majority answers the public’s request and is intended to reassure the public that the Board has the appropriate priorities.

Last year, the Board sponsored AB 2060 (Quirk) to help restore public trust and confidence in the operations of the Board, and this is still the Board’s recommended approach.

ISSUE #2: (RESEARCH PSYCHOANALYST REGISTRATION.) MBC registers Research Psychoanalysts (RPs), individuals who practice psychoanalysis for fees for no more than one third of the individual’s total professional time (which includes time spent in practice, teaching, training or research). Why does MBC administer the RP registration program rather than the Board of Psychology, which oversees those practicing in psychology and has experience administering registration programs?

Staff Recommendation: The Committees should evaluate the implications of this transfer, including potential cost savings or other fiscal impacts and workload. MBC and the Board of Psychology should provide an update on any efforts to coordinate their work and oversight of those providing these services, including assurances that BPC Section 2529 limitations on practice are complied with. The Committees may wish to

transfer registration of RPs to the Board of Psychology, which already successfully administers registration programs for individuals practicing psychology.

Board Response (April 2023):

The Board's revenue and expenditures related to the RP program are very low, with a total of 86 RPs as of June 30, 2022. The Board has received less than 10 initial registration applications during each of the prior six fiscal years and has taken no disciplinary action during that same timeframe. The Board has not needed to coordinate with the Board of Psychology in recent years related to the oversight of RPs but is prepared to collaborate on the transition of this program.

As provided for in BPC section 2529, in March 2023, the Board recognized the Hamburg (Germany) Research Psychoanalytic Institution as an approved research psychoanalytic institution, authorizing eligible graduates to register as an RP.

ISSUE #3: (LICENSED MIDWIVES.) MBC regulates licensed midwives but regulations to allow LMs to practice independently have stalled. What is the status of LM independent practice authority and what changes may be necessary to achieve the Legislature's intent?

Staff Recommendation: MBC should describe the potential impacts of creating a new, standalone board for a small licensing population, including all costs that would be necessary to establish an LM board. MBC should inform the Committees of any potential benefit to patients that this proposal would result in.

Board Response (April 2023):

Licensed midwives (LMs) have been independent practitioners since January 1, 2014, and are not subject to physician supervision. Consequently, they should not be licensed and regulated by the Board. An independent LM board will provide LMs input and control consistent with their practice act over their own licensing, regulatory, and enforcement decisions. In turn, this will likely elevate LM visibility and recognition for their importance in California as respected, qualified, independent healthcare providers.

Currently, the Board appoints members to the Midwifery Advisory Council, which is an advisory body to the Board on matters related to licensed midwifery, which often has vacant positions. An independent LM Board may be more successful in recruiting well-qualified members to apply for appointment, since as a board member, their participation will have a more direct impact on the profession and consumer protection.

The Board has been diligent in its licensing and disciplinary responsibilities and pursuing its mission protecting consumers related to the practice of licensed midwifery. A new LM board would also be able to handle these functions, thereby, at minimum, extending existing consumer protections.

When projecting the costs of a new licensing board, among other variables, consideration should be given to the number of board members (e.g., per diem and travel expenses), the salary range of an executive officer, pro rata payments to DCA, and necessary office lease expenses. In addition, enforcement expenses can vary from year to year.

Although the Board has not developed the above noted cost projections, for Fiscal Year 2021-2022, the Board had expenses of approximately \$211,000 (excluding OAG and HQUI expenses) for shared licensing and administrative services performed on behalf of the licensed midwifery program.

Total LM related expenses continue to exceed the budgetary authority for, and revenue to, the LM fund. Accordingly, the LM fund will require a decrease in expenses or revenue increase to remain solvent.

ISSUE #4: (COMPLAINANT LIAISON.) Complaints are the heart of MBC's enforcement program. Delays in complaint processing can have grave effects on patients and the public and compound MBC's efforts to protect consumers. In consumer satisfaction surveys, MBC consistently receives unfavorable feedback and response for its handling of complaints. Questions have arisen for many years about the potential benefit to patients and the public if complaint information is made available, and the value for MBC to establish a formal program with dedicated staff and resources to assist patients as they navigate the enforcement process. Should MBC establish a dedicated ombudsperson or liaison unit to ensure that complainants are able to participate in the enforcement process?

Staff Recommendation: MBC should explain the steps necessary to effectively establish this program, including the role that any increased revenue would play in bringing this effort to fruition.

Board Response (April 2023):

As indicated in the Board's Sunset Report, a new Complainant Liaison Unit is initially estimated to require up to four staff members at an annual cost of approximately \$450,000. Until the Board's financial position improves, it would be impractical to add this new unit.

Therefore, the first step would be for the Legislature to approve a substantial fee increase so that the Board has sufficient annual revenue to meet its current and future expected financial obligations. After that point, and in consultation with the Department of Consumer Affairs and Department of Finance, a budget change proposal could be submitted for legislative approval to establish position and spending authority.

Once budget approval is secured, staff would begin recruiting for these positions and determine a process to obtain public input on the unit's operations. If the Legislature desires to have this unit established within a certain timeframe, it could add an appropriately worded statute into the Medical Practice Act.

ISSUE #5: (FUND CONDITION AND FEES.) MBC continues to face insolvency, having relied on loans from various other state agencies to fund its operations. Fees were raised in 2021 but physician and surgeon fees were set almost \$300 below what MBC requested, and what a third-party fee study identified as appropriate levels. Since then, costs have increased and now MBC has to pay back loans with interest.

Staff Recommendation: MBC should be provided increased revenues to ensure its fiscal stability and fund solvency. MBC should provide an update on the status of discussions with licensees and the Department of Finance to assist the Legislature in charting a course forward that allows MBC to have resources to conduct its important work.

Board Response (April 2023):

The Board agrees with the staff recommendation to increase Board revenue so that fiscal stability is restored, and fund solvency assured.

Since January 2020, after the Board published its [fee study](#), the Board has had multiple discussions with various stakeholders on the need for substantial revenue increases to fortify the Board's financial position.

The Board appreciates the support of the Governor's Administration in this effort and DCA in particular, which collaborated with the Board prior to publishing its 2022 Sunset Report, to determine the physician and surgeon fee amounts necessary to meet the Board's financial obligations.

The Board appreciated hearing representatives from the medical community state their commitment to collaborate on solutions that will enable the Board to be fiscally solvent during the Board's March 17, 2023, sunset oversight hearing. The Board looks forward to working with stakeholders toward a sustainable funding solution.

ISSUE #6: (APPLICATION INQUIRIES.) Does asking applicants about physical or mental health conditions potentially prevent them from seeking important and necessary treatment?

Staff Recommendation: MBC should inform the Committees about the usefulness of inquiring at the time of application and the impact of applicants being asked about their behavioral health.

Board Response (April 2023):

In 2019, the Board updated licensing application questions to address concerns that they were overly intrusive. Following those changes, the Board was one of 21 medical boards to be named a “[WellBeing First Champion](#)” by the [Dr. Lorna Breen Heroes Foundation](#). This initiative recognizes medical boards that prioritize clinician well-being by removing overly broad and invasive mental health questions.

The Board’s current application asks three questions on its physician applications to learn about any current conditions that are impairing their ability to practice medicine safely. If the applicant indicates that they have such a condition, including that they are currently enrolled in a substance abuse program, the Board will attempt to evaluate their circumstances to determine whether any licensing restrictions are necessary to help ensure their safe practice, including the option of a Limited Practice License. The Board’s application questions are specifically limited to conditions that impair their ability to practice medicine safely, including substance use disorder, and not the sole existence of a condition.

The Board does not issue licenses by specialty, so a full and unrestricted Physician’s and Surgeon’s License permits a licensee to practice medicine in all specialties and modalities authorized under the Medical Practice Act. In pursuit of the Board’s mission to protect consumers, the Board must ensure all applicants are thoroughly evaluated to identify potential risks to public safety and institute appropriate licensing safeguards.

The Board is developing an educational webpage with the following goals:

- Encourage applicants and licensees to seek mental health treatment whenever they believe it will be helpful to them.
- Explain the purpose of the application questions related to impairment.
- Explain the Board’s process to consider whether the applicant’s condition may affect the applicant’s ability to safely practice.

ISSUE #7: (POSTGRADUATE LICENSE.) MBC issues a license to physicians enrolled in residency programs, an effort MBC began exploring and working on in 2016-17 in order to ensure that this category of physicians have met certain educational and training requirements, with the goal of simplifying licensing processing for these physicians as they progress through national examination requirements. The initial effort was delayed until 2020 and now, physicians must complete 3 years of postgraduate training in order to have their license renewed.

Staff Recommendation: The Committees may wish to consider changes to the Act in order to create efficiencies in the PTL licensing process.

Board Response (April 2023):

As noted in the background paper, the Board has proposed multiple substantive and technical statutory changes to PTL statutes that will provide flexibility to the Board and applicants during the application process, without reducing consumer protection. Those proposals are detailed in the Board's Sunset Report, beginning on p. 181.

In addition, during their March 23, 2023, meeting, the Board [approved a proposal](#) that would require the Board to issue a PTL for 36 months, rather than the current 15/27-month timeframe. This furthers the Board's Sunset Report proposal on p. 181 titled ***Reexamining Postgraduate Training License Expiration Timeframes*** and is expected to support the continuity of care for patients being treated by physicians in a residency program.

The Board requests that the Legislature approve its PTL-related proposals.

ISSUE #8: (MEXICO PILOT PROGRAM.) Legislation passed in 2002 established a pilot program aimed at addressing primary care and dental practitioner shortages by authorizing MBC and the Dental Board of California to issue licenses for three years to physicians and dentists from Mexico who meet specified criteria. What steps has MBC taken since 2003 to put the program in place? What is the status of the effort to better serve limited English proficient Californians?

Staff Recommendation: MBC should advise the Committees of any statutory changes necessary to the Act and comments about the proposal from Mexico Pilot Program participants and supporters.

Board Response (April 2023):

Mexico Pilot Program (MPP) advocates informed the Board that several MPP applicants are unable to obtain a visa to enter the U.S. because they lack an MPP license. Further, because these applicants lack an individual taxpayer identification number or social security number (SSN) (which may be obtained during the visa approval process), BPC section 30 prevents them from obtaining an MPP license.

Accordingly, to further the purposes of this ongoing program, the Board adopted a Support position on AB 1395. This bill would require the Board to issue an MPP license to otherwise qualified applicants but would not authorize them to practice medicine until they provide their SSN to the Board.

Further, the Board is collaborating with MPP advocates on a legislative solution that would authorize the Board to grant a one-time extension of the expiration date of an MPP license who was unable to practice medicine for more than 30 consecutive business days under certain circumstances (e.g., awaiting a federal visa). Board staff

are working productively with MPP advocates to finalize language for possible Board support at an upcoming public meeting.

ISSUE #9: (MANDATORY REPORTING.) MBC receives reports related to physicians from a variety of sources. These reports are critical tools that ensure MBC maintains awareness about its licensees and provide important information about licensee activity that may warrant further MBC investigation. Is current law sufficient regarding mandatory reporting of physician practice and conduct by health facilities to the Medical Board of California?

Staff Recommendation: MBC should provide an update on the potential patient safety benefit these changes may result in. The Committees may wish to amend the Act to provide MBC additional information about licensees.

Board Response (April 2023):

As discussed in the Board’s Sunset Report on p. 176, the Board believes that current law is not sufficient to help ensure the Board is made aware of instances when a physician may have acted in an unprofessional manner.

Expanding the current reporting requirements to include any discipline or practice limitations imposed by an employer or contractor upon a physician due to a medical disciplinary cause or reason will allow the Board to take corrective action with a licensee at an earlier time, without waiting for a harmed consumer to file a complaint.

ISSUE #10: (EVIDENTIARY STANDARD.) MBC is held to a burden of proof standard in its disciplinary cases that it states is higher than what is required in the vast majority of states and other jurisdictions. Should the MBC evidentiary standard be updated from “clear and convincing” to “preponderance of evidence”?

Staff Recommendation: MBC should provide the Committees an update on discussions with partners in its disciplinary process, including HQUI, OAG, and others about transitioning to a new standard. The Committees should evaluate the feasibility and merit of making this change to apply a preponderance of evidence standard, and whether a clear and convincing standard should always be applied to cases resulting in significant patient harm that would be the cause for license revocation.

Board Response (April 2023):

The Board currently evaluates any acquired evidence of unprofessional conduct for each case on an individual basis. Therefore, if the Legislature reduces the burden of proof required for disciplinary action, the Board anticipates following its typical investigative and prosecutorial practices but may be expected to act on cases that otherwise must be closed.

It is not clear to the Board how to apply a variable standard of proof that depends on the severity of discipline to be imposed. The Board does not begin an investigation with a certain disciplinary outcome in mind. However, the Arizona Medical Board uses a preponderance of evidence standard for sexual misconduct cases, regardless of the disciplinary action to be taken, but requires clear and convincing evidence for other types of cases.

HQIU and OAG are aware of this proposal and the Board is not aware of any implementation concerns should this be enacted into law.

ISSUE #11: (NOTICE OF SUBSEQUENT ARRESTS.) Does the Act need to be amended to ensure MBC is receiving timely information about licensees?

Staff Recommendation: MBC should update the Committees on this effort, the impact to MBC enforcement work anticipated through receipt of this additional information, and what steps are necessary for MBC to receive important information about its licensees.

Board Response (April 2023):

The Board is currently in discussions with DCA and DOJ on appropriate statutory language necessary to ensure that the Board receives federal subsequent arrest and conviction reports. The Board already receives reports on its licensees related to their subsequent arrests and convictions that occur in California.

Once the Board can confirm the language that will meet federal requirements, it will be provided to the Legislature for inclusion in the Board's sunset legislation.

After the Medical Practice Act has been appropriately amended, it is expected that the Board will be enrolled in the FBI's Criminal Justice Information Services Rap Back program and begin to receive additional arrest and conviction reports for all individuals licensed after January 1, 2024.

The Board has not studied the impact of this change on its enforcement program and DOJ is required to provide this information to the Board pursuant to Penal Code section 11105.2.

ISSUE #12: (LETTER OF ADVICE.) At MBC's request, SB 806 included authority for MBC to issue an administrative confidential letter of advice to a licensee to resolve a complaint for an alleged minor violation of the Act that is not related to patient care. MBC believes this language is too restrictive and would like additional authority.

Staff Recommendation: Substituting a robust enforcement process for issuance of a letter by MBC staff was the source of concern throughout MBC's prior sunset review

oversight and led to the limitation on use of this tool. MBC should provide redacted examples of the types of enforcement cases it believes this letter should be utilized for and should provide justification as to how this benefits patients and the public.

Board Response (April 2023):

If the Board determines that a physician has violated the standard of care, but there is not enough evidence to meet the legal requirements to take disciplinary action, the Board may currently issue the licensee an educational letter. Such letters are advisory in nature and while the letter may suggest that the physician take a certain continuing education course, the suggestion is not binding and is unenforceable.

The letter of advice would provide the Board with another tool to resolve minor matters and would allow the Board to collaborate with the licensee and form a binding agreement to take action that would remediate the issue at hand. This would offer the Board, like other states, another pathway to resolve minor matters that do not meet the requirements for discipline.

Attached to this response is a redacted example of the educational letter referenced above.

ISSUE #13: (ACCESS TO PERSONAL INFORMATION CONTAINED IN ENFORCEMENT FILES.) Should MBC be authorized to provide consumers a copy of their medical records obtained during an investigation?

Staff Recommendation: Particularly given MBC's fiscal concerns, MBC should provide additional information about the increased workload this change could result in and its goals if granted this authority. MBC should explain what impact this might have on various proceedings and the rationale that led to this request, for example, if MBC is aware of altered patient records that affect the individual's care and well-being.

Board Response (April 2023):

This proposal is intended to help consumers who are concerned that their provider may have altered their medical records or who are otherwise unable to obtain records from a health care provider or facility. This proposal may help a consumer pursue a complaint with the Board or a civil action against a provider. In Fiscal Year 2020-21 and Fiscal Year 21-22, the Board received 53 and 42 complaints, respectively, related to altered medical records.

The Board anticipates that it may receive an influx of requests for records after such a law takes effect, which may subside after the first year of implementation. Depending upon request volume, the Board may require additional staff to process these requests.

In addition to possible new staff, to help ensure that the Board can manage its costs and workload related to this new service, the Board suggests the Legislature include the following in any enacted statute:

- Provide for a delayed implementation of this requirement to allow the Board time to establish appropriate procedures.
- Limit the applicability of this authority to complaints filed after the implementation date of the authority.
- Clarify that the Board may only provide records to the extent they are maintained by the Board pursuant to its records retention schedule.
- Authorize the Board to charge a fee commensurate with any staff time and reproduction costs associated with producing the requested records.
- Provide a 30-day suggested timeframe for the Board to provide the requested records, following receipt of payment. When necessary, allow the Board to provide the requested records in a timeframe determined by the Board, as staff resources allow.
- Authorize the Board to produce the records in the format most convenient to the Board and that meets the Board's security requirements.
- In situations where the Board receives a request for a large volume of records maintained by the Board in a paper format, authorize the Board to require the requestor to hire a mobile copy service to come to the Board's office(s) to make the appropriate copies.

ISSUE #14: (TIMEFRAME TO REQUEST PROBATION MODIFICATION.) MBC believes its resources and time are potentially inefficient in processing multiple requests for licensure reinstatement or probation modification after MBC has already imposed discipline. Should the timeframes be adjusted?

Staff Recommendation: The Committees may wish to amend the Act to ensure that its resources and time are not expended on proceedings that may not change a particular prior disciplinary outcome.

Board Response (April 2023):

The Board requests the Legislature approve this proposal, which is discussed on pp. 177-178 in the Board's Sunset Report.

ISSUE #15: (ENFORCEMENT ENHANCEMENTS.) MBC believes that various enhancements to the Act are necessary for MBC to ensure public protection and continues to request updates to the Act accordingly.

Staff Recommendation: The Committees may wish to amend the Act to ensure MBC has the necessary tools to take swift action.

Board Response (April 2023):

The Board requests the Legislature approve its various enforcement proposals, which are discussed on pp. 170-181 in the Board's Sunset Report.

ISSUE # 16: (ENFORCEMENT MONITOR.) SB 806 required an independent enforcement monitor to review MBC enforcement processes, an effort previously undertaken 20 years ago. What were the findings from the preliminary report?

Staff Recommendation: The Committees should explore options for reform to MBC processes and should continue to track the monitor's work. The Committees may wish to explore potential improvements to enforcement outcomes that could be gained if MBC investigators are again housed at MBC. The Committees may wish to review whether MBC cases should continue to be prosecuted by OAG or if an alternative path exists.

Board Response (April 2023):

The Board has not yet discussed the Enforcement Monitor's initial report, but the report clearly underscores the need for the Board to have sufficient and stable funding. The report does not suggest that the Board should discontinue its partnership with the OAG. Overall, the Board has an excellent relationship with the OAG and appreciates the services the OAG provides. The hourly rates charged by the OAG could not be compared to any other option based upon the OAG's extensive level of expertise and experience in addressing the Board's cases. The Board looks forward to discussing this report during its May 18-19 meeting and reviewing the Enforcement Monitor's final report, which is expected by July 2023.

ISSUE #17: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE MEDICAL PRACTICE ACT AND MBC OPERATIONS.) There are amendments to the Act that are technical in nature but may improve MBC operations and the enforcement of the Medical Practice Act.

Staff Recommendation: The Committees may wish to amend the Act to include technical clarifications.

Board Response (April 2023):

The Board requests the Legislature approve its various technical licensing proposals, which are discussed on pp. 182-186 in the Board's Sunset Report.

ISSUE #18: (CONTINUED REGULATION BY MEDICAL BOARD OF CALIFORNIA.) Should the licensing and regulation of physicians and surgeons and other allied health professionals be continued and be regulated by the current MBC membership?

Staff Recommendation: The MBC should be continued, and reviewed again on a future date to be determined.

Board Response (April 2023):

The Board agrees with the staff recommendation that the Board should be continued and requests that its sunset date be extended by a four-year period. The Board, however, reasserts its request for research psychoanalysts to be transferred to the Board of Psychology and for licensed midwives to have their own board.



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Enforcement Program

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Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

April 14, 2023

[REDACTED]

Re:

Control #: [REDACTED]

Dear Dr. [REDACTED]:

The Medical Board of California (Board) has concluded its review of the complaint filed against you regarding the care and treatment provided to [REDACTED].

A medical consultant to the Board reviewed the letter of complaint and the medical records. Based on this review, the medical consultant determined that you should have performed medication reconciliation.

The Board finds that the treatment you rendered constitutes a departure from the acceptable standard of care and recommends that you institute the necessary changes in your practice to avoid similar occurrences in the future. It is strongly recommended that you take a course on medication safety and reconciliation as such errors can be potentially fatal. While this complaint has been closed, further action may be taken if similar concerns are brought to the Board's attention.

Thank you for your cooperation in this matter.

Sincerely,

Sharlene Smith
Enforcement Program Manager
Central Complaint Unit
Medical Board of California