

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 425
AUTHOR: Hill
BILL DATE: April 30, 2019, Amended
SUBJECT: Health Care Practitioners: Licensee's File:
Probationary Physician's and Surgeon's Certificate:
Unprofessional Conduct
SPONSOR: Author
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require health facilities and entities that allow a licensed health care professional to provide care for patients, to report allegations of sexual abuse and sexual misconduct by a licensed health care practitioner to that practitioner's licensing board within 15 days, and would impose a fine for failure to report. This bill would make other changes related to the Medical Board of California's (Board) disciplinary action and enforcement process.

BACKGROUND:

In 2018, an investigation by the LA Times reported on multiple unresolved complaints of alleged sexual misconduct by a doctor who worked at the University of Southern California's (USC) student health center. Although many individuals complained to various employees of USC, none of these complaints were reported to the Board.

The other changes in this bill related to the Board were approved as legislative proposals at the Board's October 2018 Board Meeting.

ANALYSIS:

This bill would require a health facility or clinic or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients to file a report of any allegation of sexual abuse or sexual misconduct made against a healing arts licensee to the appropriate licensing board within 15 days of receiving the allegation of sexual abuse or sexual misconduct. This bill would define an arrangement under which a licensee is allowed to practice or provide care for patients to include, but not be limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

This bill would require an employee or a healing arts licensee that works in any health facility or clinic or other entity who has knowledge of any allegation of sexual abuse or sexual misconduct by a healing arts licensee to file a report with the appropriate licensing board that has regulatory jurisdiction over the healing arts licensee and the administration of the health facility or clinic or other entity within 15 days of knowing about the allegation of sexual abuse or sexual misconduct.

This bill would specify that a willful failure to file the required report is punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the licensee regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Board. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licensee. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

This bill would specify that any failure to file the report is punishable by a fine not to exceed fifty thousand dollars (\$50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report required under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Board. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars (\$50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether any person who is designated or otherwise required by law to file the report required under this section exercised due diligence despite the failure to file or whether the person knew or should have known that a report required under this section would not be filed; and whether there has been a prior failure to file a report required under this section. The amount of the fine imposed may also differ based on whether a health care facility or clinic is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

This bill would specify that a person, including an employee or individual contracted or subcontracted to provide health care services, a health facility or clinic or other entity

shall not incur any civil or criminal liability as a result of making a report required by this section if made in good faith.

This bill would require the licensing board to investigate the circumstances underlying a report received pursuant to this bill.

The Board supports three of the provisions in this bill already, as they were previously approved as legislative proposals. The Board supports the provision that amends Business and Professions Code (BPC) Section 800(c)(1) to strike the word “comprehensive” in front of summary; the Board supports the provision that amends BPC Section 2221 to require probationary license information to stay on the Board’s website after probation is completed for a period of 10 years; and the Board supports the provision that amends BPC Section 2234(h) regarding physician interviews to include in the definition of unprofessional conduct the failure of a licensee, in the absence of good cause, to attend and participate in an interview by the Board, current law requires the failure to be repeated. The Board believes these provisions will help to prevent delays in the Board’s enforcement process, which negatively impact the Board’s enforcement timelines, and increase transparency to consumers by providing access to information that is public, but not available on the Board’s website after the probationary period is completed.

According to the author, “SB 425 closes legal loopholes that can allow a subject of repeated sexual abuse and misconduct complaints to work at a health facility for years because the relevant regulatory board is not notified by the facility of the allegations against a licensee. Allegations of sexual abuse or misconduct by doctors and other medical professionals must be reported swiftly to the appropriate licensing board for review so that regulators can determine whether to conduct an independent, confidential investigation. State regulatory boards cannot fulfill their responsibilities to protect patients and other consumers, if they are not notified of these serious allegations involving their licensees. The failure to do so shields bad actors while exposing patients to greater risks.”

The Board already supports three of the provisions in this bill. The requirements for health care facilities and entities and employees and health care practitioners working in those facilities and entities to report allegations of sexual abuse and sexual misconduct by a licensed health care practitioner to that practitioner’s licensing board would further the Board’s mission of consumer protection and ensure that the Board is aware of these allegations so the Board can look into these incidences of potential sexual abuse and misconduct. The Board has taken a support position on this bill.

FISCAL:

SB 425 will result in a significant increase in complaints, which will impact the Board’s enforcement workload. The Board is estimating that the increase will be at least three times the current complaints received via BPC Section 805 reports, since these reports are also for incidents that happened in a facility, although BPC Section 805 reports must

go through a formal peer review process and action must be taken by the peer review body before anything is reported to the Board. In fiscal year 2017/18, the Board received 141 BPC Section 805 reports. Three times that amount would be 423 new complaints per year. The Board is estimating that it will need a .5 PY at an MST level and 1 PY at the AGPA level in the Board's Central Complaint Unit to process and review these 423 new complaints. These ongoing costs per year are \$37,000 for the MST and \$114,000 for the AGPA.

The Board is estimating that 20% of the 423 complaints will be consolidated into one investigation, which would be 339 new cases. The Board is estimating that each case will take 60 hours to investigate, as they will be more complex. 339 cases times 60 hours equals 20,340 hours. An investigator PY is 1,776 hours per year. This equates to the Board needing to pay for 11 new investigators in HQIU. One investigator costs \$132,000 per year and on-going, so this would result in \$1,452,000 in fiscal impact to the Board.

The Board is estimating that 1/3 of the cases investigated will go the AG's Office for prosecution, so that results in about 100 cases going to the AG's office. For the AG's Office, each case takes about \$20,000 in billing to prosecute. This equals \$2,000,000 in AG costs.

The Board is estimating that 20% of the 100 cases will go to the Office of Administrative Hearings (OAH) for a hearing. The costs of each case to go to OAH is \$12,500 times 20 is \$250,000 in costs for OAH.

The total costs for this bill are \$151,000 for Board position costs; \$1,452,000 for HQIU Investigator PY costs; \$2,000,000 for AG costs and \$250,000 for OAH costs. This results in \$3,853,000 in total costs to the Board.

SUPPORT: Consumer Attorneys of California
Consumer Watchdog
Medical Board of California (support specified provisions)

OPPOSITION: Association of Life and Health Insurance Companies; California Association of Health Plans; California Chapter of the American College of Cardiology; and California Medical Association