

Enforcement Program Timeframes and Cost Increase

The Medical Board of California (Board) has an enforcement program that investigates allegations of wrongdoing and takes disciplinary or administrative actions as appropriate. The Board's Central Complaint Unit (CCU) receives and triages all complaints. If it appears that a violation may have occurred, the Board transfers the complaint to either the Department of Consumer Affairs (DCA) Health Quality Investigation Unit (HQIU), comprised of sworn peace officers, or to the Board's Complaint Investigation Office (CIO), comprised of non-sworn special investigators. The investigators (sworn or non-sworn) investigate the complaint and, if warranted, refer the case to the Attorney General's (AG) Office for disciplinary action.

Physician and Surgeon enforcement timeframes stated below represent five fiscal years (FY) from FY 14/15 through FY 18/19. The enforcement timeframes have had the following increases/decreases in median days:

- 8% increase in the complaint process,
- 43% increase in the HQIU investigation process,
- 24% decrease in AG Office filing process, and
- 26% decrease in time to complete the legal process for a case.

In FY 18/19, the Enforcement Program accounted for 76% (\$49.3M) of the Board's overall expenditures. Enforcement Program costs have continued to increase. In recent years, the Board has seen significant cost increases for HQIU, the AG Office, Office of Administrative Hearings (OAH), and evidence/witness fees; and expects these costs to substantially increase over the next few years. Specifically, from FY 14/15 to FY 18/19 the Board's expenses had the following increases:

- 20% increase in HQIU expenses from \$16.3M to \$19.6M,
- 23% increase in AG Office expenses from \$12M to \$14.8M,
- 45% increase in OAH expenses from \$1.1M to \$1.6M, and
- 35% increase in Evidence/witness expenses from \$1.7M to \$2.3M.

Enforcement timeframes have increased with HQIU showing the most significant increase in median days to investigate a complaint. The Enforcement Program costs have steadily increased with OAH expenses showing the most growth. In the coming years, the Board expects the Enforcement Program costs will increase even more.

Complaint Process

Measurement of the complaint process timeframe is from the time the Board receives a complaint through either referral for investigation or closure of the complaint. A Board analyst reviews the complaint and gathers all necessary information for evaluation. Information gathered includes medical records, a response from the subject medical provider, and any additional information necessary to determine if a violation of the law occurred. In quality of care cases where warranted, the Board refers the complaint to a medical consultant for a thorough review. The median days to process a Physician and

Surgeon complaint have increased by 8% from 113 days in FY 14/15 to 122 days in FY 18/19.

HQIU Investigation Process and Expenses

Senate Bill 304 (Lieu, Chapter 515, Statutes of 2013) transferred the Board's investigative staff to the HQIU in July 2014. The Board transfers most complaints that require additional investigation by a sworn investigator to the HQIU. The Board is responsible for reviewing the outcome of the investigation for approval, but day to day management and direction of the investigation process is handled by DCA and is outside of the Board's oversight.

Measurement of the HQIU investigation process timeframe is from the time the Board refers the complaint to the HQIU through either referral to the AG Office or closure of the complaint. Prior to transferring the Board's investigative staff to the HQIU, the Board's median days to investigate a Physician and Surgeon complaint was 205 days in FY 13/14. Just one year later, the median days for the HQIU to investigate a Physician and Surgeon complaint increased to 352 days in FY 14/15 an increase of 72% (147 days).

The median days for the HQIU to investigate a Physician and Surgeon complaint have increased by 43% from 352 days in FY 14/15 to 502 days in FY 18/19. Since moving the Board investigators to HQIU, this increase to 502 days has more than doubled the timeframes from 205 days in FY 13/14. A chart is attached to outline these changes.

HQIU expenses have increased by 20% from \$16.3M in FY 14/15 to \$19.6M in FY 18/19. The Board expects the HQIU staff salary and benefits expenses to increase by an additional 44% from \$19.6M in FY 18/19 to \$28.3M in FY 24/25.

CIO Investigation Process

In July 2014, the Board established its CIO. The CIO investigates quality of care investigations following a medical malpractice settlement or judgement, cases against physicians charged with or convicted of a criminal offense, and physicians petitioning for reinstatement of a license following revocation or surrender of his or her license.

Measurement of the CIO investigation process timeframe is from the time the Board's CCU refers the complaint to CIO through either referral to the AG Office or closure of the complaint. The median days for the CIO to investigate a Physician and Surgeon complaint has increased by 223% from 57 days in FY 14/15 to 127 days in FY 18/19. As a newly created unit which began in FY14/15, the timeframe increase is expected. The time to investigate remains less than the median timeframe for sworn investigations.

AG Office Filing Process and Expenses

Measurement of the AG Office filing process timeframe is from the time the Board transmits the case to the AG Office to the filing of the initial pleading. The median days for the AG Office filing process have decreased by 24% from 68 days in FY 14/15 to 55 days in FY 18/19.

Measurement of the other legal process timeframe is from filing of the initial pleading to the final disposition of the case. The median days for the completion of the legal process have decreased by 26% from 392 days in FY 14/15 to 311 days in FY 18/19.

AG Office expenses have increased by 23% from \$12M in FY 14/15 to \$14.8M in FY 18/19. This increase represents an average annual growth of 6%. Between FY 16/17 through FY 18/19, the AG Office exceeded their budget allocation by \$3M, resulting in the Board having to absorb these costs.

In January 2019, the Board's vertical enforcement (VE) model ended.

Beginning July 1, 2020, the AG office's hourly rates have been increased. The Board's FY 20/21 budget for the AG office will be \$16.9M.

Other Legal Process and Expenses

The Board incurs costs associated with the hearing process through OAH. OAH expenses have increased by 45% from \$1.1M in FY 14/15 to \$1.6M in FY 18/19. This increase represents an average annual growth of 11%. The Board projects the OAH costs will increase 69% from \$1.6M in FY 18/19 to \$2.7M in FY 24/25. Based on an annual average increase of 11.5%.

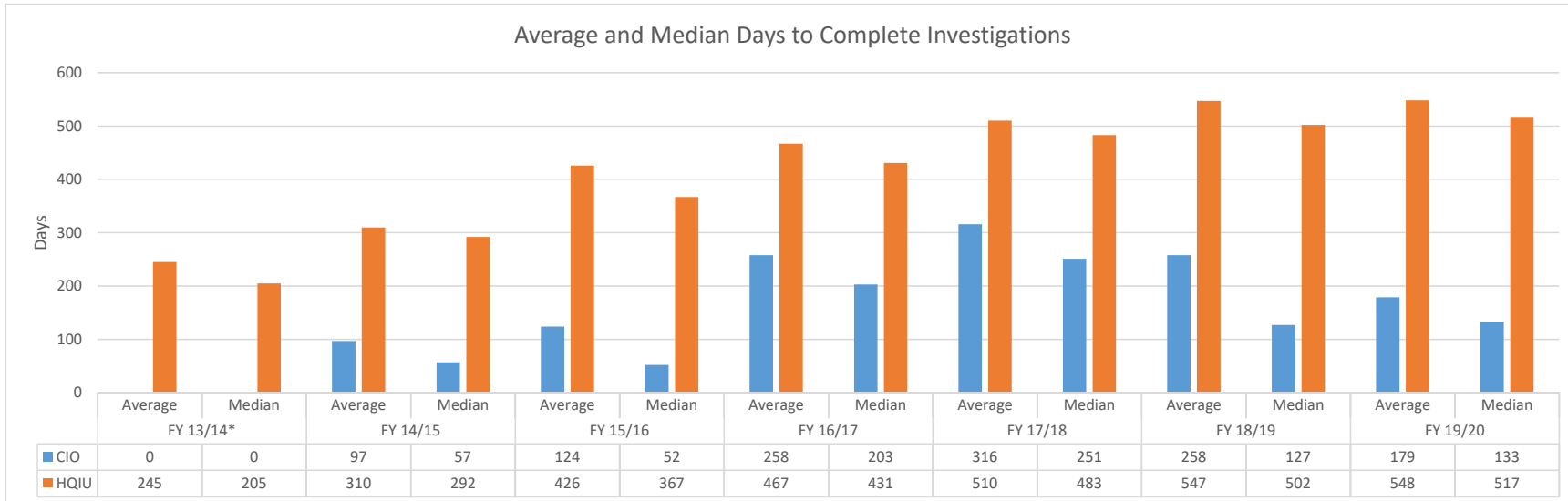
Evidence/Witness Expenses

Evidence/witness costs are associated with hiring expert witnesses to testify in enforcement cases. Evidence/witness expenses have increased by 35% from \$1.7M in FY 14/15 to \$2.3M in FY 18/19. This increase represents an average annual growth of 9%. The Board projects the evidence/witness costs will increase from \$2.3M in FY 18/19 to \$2.8M in FY 24/25, which equates to an average of 3% each year.

Average and Median Days to Complete Investigations

	FY 13/14*		FY 14/15		FY 15/16		FY 16/17		FY 17/18		FY 18/19		FY 19/20	
	Average	Median	Average	Median	Average	Median	Average	Median	Average	Median	Average	Median	Average	Median
CIO	N/A	N/A	97	57	124	52	258	203	316	251	258	127	179	133
HQIU	245	205	310	292	426	367	467	431	510	483	547	502	548	517

* Sworn & Non-Sworn combined; CIO and HQIU did not exist until 7/1/2014



* Sworn & Non-Sworn combined; CIO and HQIU did not exist until 7/1/2014

Fee Increase and Change in Minimum Months in Reserve

The Medical Board of California (MBC) is a special fund entity, entirely funded by licensing and regulatory fees. The MBC receives no funding from the State's General Fund.

Pursuant to its sunset legislation (Figueroa, Chapter 674, Statutes of 2005), in January 2006 MBC implemented a 29.5% fee increase, raising the initial physician licensure fee and the biennial renewal fee from \$610 to a statutory maximum of \$790. This legislation also repealed the MBC's ability to recover its costs associated with investigation directly from the physician who was the subject of the investigation. Instead, stakeholders supported a fee increase to compensate for the loss of MBC's ability to pursue investigation cost recovery from individual physicians. The other MBC fees have remained the same since their inception, as early as 1993.

Fourteen years after the last fee increase, MBC has seen minimal revenue growth, while during the same period experiencing significant expenditure increases, the majority of which are outside of the MBC's control. These factors result in the Contingent Fund of the Medical Board of California (fund) being structurally imbalanced where annual expenditures exceed annual revenues. The MBC projects insufficient available funds for ongoing operations by the beginning of fiscal year 2021-22, if an increase in fees are not timely.

Further, MBC has continued to see a significant increase in Physician and Surgeon licensing applications, Physician and Surgeon complaints, investigations opened, and investigations referred to the Attorney General's (AG) Office. Specifically, the Board had the following increases from FY 06/07 to FY 18/19:

- 28% in Physician and Surgeon applications,
- 57% in Physician and Surgeon complaints,
- 31% in Physician and Surgeon investigations opened, and
- 54% of Physician and Surgeon investigations referred to the AG Office.

These increases in MBC activities has garnered several accepted Budget Change Proposals (BCP) by the Legislature including:

- In FY 16/17, MBC received an increase of \$206,000 and ongoing annually to fund expert reviewer cost.
- MBC received an increase of \$187,000 in FY 17/18, \$161,000 in FY 18/19 and ongoing annually to fund two permanent positions to address increased workload in the Enforcement Program.
- In FY 19/20, MBC received an increase of \$499,000 and ongoing annually to fund an increase to the hourly rate for trained Medical Expert Reviewers.

Due to the increase in expenditures, projection of insufficient revenue for continued operations in 2021, and the statutory two to four month reserve provision, MBC contracted with CPS HR Consulting (CPS) November 12, 2019 to conduct a fee study.

The study included a review of MBC's fee structures to determine if the fee levels are appropriate for the recovery of the actual costs of conducting its programs. The fees reviewed in this study include Physician and Surgeon, Special Faculty, Licensed Midwife, Polysomnographic Trainee/Technician/Technologist, Research Psychoanalyst and Fictitious Name Permit fees. CPS also analyzed the trends of the costs outside of MBC's control, which contributed to the significant erosion of its fund in recent years.

[CPS's fee study](#) findings and recommendations were as follows:

Finding 1

MBC's revenue has remained relatively static in the past 13 fiscal years, growing from \$49.7 million in FY 2006/07 to \$59.6 million in FY 2018/19, representing an increase of 19.9%. This calculates to an annual growth of 1.5%.

During the same period, MBC expenditures have outpaced revenues. MBC total expenditures have grown from \$44 million in FY 2006/07 to \$65.9 million in FY 2018/19 for an overall increase of 49.8% and an annual growth of 3.8%.

MBC's fund is structurally imbalanced and is estimated to have a fund balance of \$0.6 million (0.08 months-in-reserve) by the end of FY 2020/21 and will be insolvent by the beginning of FY 2021/22. If MBC incurs any additional unbudgeted cost increases or seeks any additional resources beyond what is currently authorized, the fund reserve will drop even further.

Finding 2

During the same period of time from FY 2006/07 to FY 2019/20, MBC's authorized staffing decreased from 265.2 PYs to 176.6 PYs, a difference of 88.6 PYs. Effective July 1, 2014, MBC's investigators (sworn peace officers), medical consultants and investigative support staff, were transferred to DCA pursuant to Senate Bill 304 (Price, Chapter 515, Statutes of 2013).

Finding 3

Expenditures outside of MBC's control have increased.

- a. Expenditures for the AG's Office have increased 35.3% (\$4M) from FY 2006/07 to FY 2018/19 (\$15.2M). For example, between FY 2016/17 through FY 2018/19 the AG's Office exceeded their budget allocation by \$3M, resulting in MBC having to absorb these costs.
- b. In FY 2019/20 MBC's AG's budget allocation increased 41.0% (\$4.9M) from \$12M to \$16.9M in FY 2020/21 due to the increased AG's hourly rate. From FY 2020/21 to FY 2024/25 the projected budget is expected to increase an additional 23.1% from \$16.9M to \$20.8M.

- c. The Division of Investigation's Health Quality Investigation Unit (HQIU) provides investigative services to MBC. HQIU staff salary and benefits expenditures are expected to increase by 44.3% from \$19.6M in FY 2018/19 to \$28.3M in FY 2024/25. This is based on an annual average increase of approximately 6.3%.
- d. Between FY 2018/19 and FY 2024/25 MBC's Personnel Services costs including salary and benefits are projected to increase by 59% from \$15.0M to \$23.8M. This is based on an annual average increase of approximately 9.8%.
- e. Office of Administrative Hearing (OAH) costs are projected to increase 69% from FY 2018/19 (\$1.6M) to \$2.7M in FY 2024/25. This is based on an annual average increase of approximately 11.5%.
- f. Departmental Services (DCA Pro Rata) is projected to increase from \$5.1M in FY 2018/19 to \$6.7M in FY 2024/25, which equates to an average of 4.5% each year.
- g. Statewide Pro Rata is a recovery of statewide general administrative costs (i.e., indirect costs incurred by central service agencies) and has been a significant cost contributor to MBC. MBC's Statewide Pro Rata cost has increased by 196.4% from \$2.7M in FY 2006/07 to \$4.1M in FY 2018/19.
- h. Evidence/witness costs are projected to increase from \$2.3M in FY 2018/19 to \$2.8M in FY 2024/25 which equates to an average of 3.1% each year.
- i. Senate Bill 84 (Chapter 50, Statutes of 2017) authorized a one-time \$6 billion supplemental pension payment to CalPERS for retirement contributions. MBC paid \$319,000 in FY 2018/19 and will pay \$685,000 annually through FY 2024/25 to repay MBC's share of the loan.

Recommendation 1

MBC's fund is structurally imbalanced and is estimated to have a fund balance of \$0.6M (0.08 months-in-reserve) by the end of FY 2020/21 and will be insolvent by the beginning of FY 2021/22. If MBC incurs any additional cost increases or seeks any additional resources beyond what is currently authorized, the fund reserve will decrease even further.

To prevent insolvency and to achieve a mandatory reserve as required by statute, it is recommended that MBC seek statutory fee increases in each of their fee categories to accommodate the expenditures and increase the reserve to four months utilizing the fee options outlined by this study.

Recommendation 2

Current law requires MBC to maintain a reserve fund balance that would cover expenditures for two to four months. The Department of Consumer Affairs (DCA) regulatory boards strive to maintain an approximate six-month reserve so that unforeseen expenses can be managed without disrupting program activities.

It is recommended that MBC amend Business and Professions Code section 2435 to increase the minimum months needed in reserve to three to six months to afford MBC the lead time and flexibility to pivot and address unanticipated expenses, as MBC has experienced in the past four years.

Enforcement and licensing activity levels have been growing, out pacing growth in revenue. BCPs have expanded the budget allocation. Based on projected revenue and expenditures, the deficit between revenue and expenditures will continue to grow, increasing the MBC's existing fund imbalance.

Since the MBC's last sunset review in 2016, the cost of doing business has significantly increased and most, if not all costs were outside of the MBC's control. Initially MBC was able to absorb the steady budget increases while being unable to act upon a downward trend due to the 2-4 months-in-reserve fund reserve limit. The steady cost increases now put the MBC in a time-constrained position to react and address the estimated deficit.

The State Budget May Revision included statutory changes to increase fees for the Board. The recommended statutory fee increases for the Board's licensees would be included in a trailer bill and the new licensing fees were set to go into effect on January 1, 2021. Unfortunately, the Legislature ultimately removed the fee increase from the State's budget. The Board recommends a statutory fee increase as outlined in the CPS fee study. Further, the Board recommends amending Business and Professions Code section 2435 to increase the minimum months needed in reserve to three to six months.