

## MEDICAL BOARD OF CALIFORNIA - 2022 TRACKER LIST

### May 5, 2022

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
<b>AB 562</b>	Low	Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: Health Care Providers: Mental Health Services	Senate Appropriations	Support, if Amended	04/08/21
<b>AB 852</b>	Wood	Health Care Practitioners: Electronic Prescriptions: Nurse Practitioner Scope of Practice: Practice Without Standardized Procedures	Senate Business, Professions, Economic Dev. Cmte.		4/18/22
<b>AB 1102</b>	Low	Telephone Medical Advice Services	Senate Floor	Support	N/A
<b>AB 1278</b>	Nazarian	Physicians and Surgeons: Payments: Disclosure: Notice	Senate Appropriations Cmte.	Support	07/13/21
<b>AB 1636</b>	Weber	Physician's and Surgeon's Certificate: Registered Sex Offenders	Assembly Appropriations Cmte.	Support, if Amended	4/20/22
<b>AB 1662</b>	Gipson	Licensing Boards: Disqualification From Licensure: Criminal Conviction	Assembly Appropriations Cmte.	Support, if Amended	4/27/22

Green – For Discussion; Blue – No Discussion Needed

## MEDICAL BOARD OF CALIFORNIA - 2022 TRACKER LIST

### May 5, 2022

<b>AB 1733</b>	Quirk	State Bodies: Open Meetings	Assembly Governmental Organization Cmte.		N/A
<b>AB 2055</b>	Low	Controlled Substances: CURES Database	Assembly Appropriations Cmte		4/21/22
<b>AB 2060</b>	Quirk	Medical Board of California	Assembly Floor	Sponsor	4/20/22
<b>AB 2098</b>	Low	Physicians and Surgeons: Unprofessional Conduct	Assembly Appropriations Cmte		4/20/22
<b>AB 2178</b>	Bloom	Physicians and Surgeons: Special Faculty Permits: Academic Medical Center	Assembly Floor		N/A
<b>AB 2626</b>	Calderon	Medical Board of California: Licensee Discipline: Abortion	Assembly Appropriations Cmte		4/18/22
<b>SB 57</b>	Wiener	Controlled Substances: Overdose Prevention Program	Assembly Public Safety	Neutral	01/18/22

Green – For Discussion; Blue – No Discussion Needed

## MEDICAL BOARD OF CALIFORNIA - 2022 TRACKER LIST May 5, 2022

<b>SB 528</b>	Jones	Juveniles: Health Information Summary: Psychotropic Medication	Assembly Human Services	Support	05/25/21
<b>SB 1365</b>	Jones	Licensing Boards: Procedures	Senate Appropriations Cmte.		N/A
<b>SB 1440</b>	Roth	Licensed Midwifery Practice Act of 1993: Complaints	Senate Floor		N/A
<b>SB 1441</b>	Roth	Healing Arts: Nonconventional Treatment	Assembly Rules (pending cmte. referral)		N/A

Green – For Discussion; Blue – No Discussion Needed

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 562  
AUTHOR: Low  
BILL DATE: April 8, 2021, Amended  
SUBJECT: Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: Health Care Providers: Mental Health Services.  
SPONSOR: United Nurses Associations of California/Union of Health Care Professionals  
California Society of Anesthesiologists  
California Medical Association  
POSITION: Support, if Amended

DESCRIPTION OF CURRENT LEGISLATION

Requires the Department of Consumer Affairs (DCA) to establish a mental health resiliency program, until Jan 1, 2025, in consultation with certain health arts boards, and contract with vendors of mental health services to provide mental health services to eligible licensees who provide, or have provided, consistent in-person health care services to patients with COVID-19, as specified.

During the Medical Board of California's (Board) May 13-14, 2021, meeting, the Board adopted a Support, if Amended position, requesting the following changes:

- All applications be received and approved by the DCA-selected mental health services vendor(s).
- All program expenses be funded by non-Board funds.

**This bill has not been amended since the prior Board meeting.**

BACKGROUND

Existing law establishes the Board and charges it with certain licensing and enforcement responsibilities. Existing law states that the protection of the public is the Board's paramount priority. In addition, current law authorizes the Board to establish a Physician Health and Wellness Program to provide for the prevention of substance abuse issues.

ANALYSIS

According to the author:

"If the true measure of a society is how it treats its most vulnerable people, we should be equally concerned with how well we support heroes who have been working nonstop during a generational crisis. The pandemic has placed our nurses, physicians, and frontline health care workers under enormous stress,

and they have been carrying this unbelievable burden for nearly a year. The trauma they have experienced will not just go away when vaccines become ubiquitous and the pandemic comes to an end. We need urgent action to support these heroes by expanding access to mental and behavioral health services.”

### **Responsibilities of DCA**

The bill requires the DCA Director to, within three months of the effective date of the bill, in consultation with the relevant healing arts boards, establish a mental health resiliency program to provide mental health services to frontline COVID 19 providers. This bill has an urgency clause and would take effect immediately upon approval of the Governor.

DCA shall contract with one or more vendors of mental health services for the duration of the program, supervise all vendors and monitor vendor utilization rates, and authorize termination of any contract. If the vendor’s contract is terminated, the Director must contract with a replacement vendor as soon as practicable.

### **Responsibilities of the Boards**

The bill requires the Medical Board of California, Osteopathic Medical Board of California, Board of Registered Nursing, Physician Assistant Board, and the Respiratory Care Board of California to do the following:

- Notify licensees and solicit applications for access to the mental health resiliency program immediately upon the availability of any services contracted for.
- Receive applications from eligible licensees that include an attestation that the applicant is eligible and includes the following:
  - The location and type of the facility or facilities the applicant worked as a frontline COVID-19 provider.
  - The applicant’s assigned unit or units at the facility or facilities.
  - A voluntary survey of race or ethnicity and gender identity.

A board shall deem the applicant eligible licensee if the attestation is complete, and any facility and unit listed would provide care to COVID-19 patients. It is unclear how a board would determine whether a certain facility provided care to such patients.

Applicants who willfully make a false statement in their attestation are guilty of a misdemeanor.

The bill provides that application to or participation in the mental health resiliency program shall not be used for purposes of disciplinary action and shall be kept confidential, except that deidentified and aggregated statistics on program usage shall be reported to the Legislature.

## Implementation Considerations

While the aim of the program is laudable, the program is likely to lead to significant new costs to the various boards to cover expenses to create and review/approve applications. More significantly, there may be substantial increases in pro-rata payments from the boards to DCA to cover expenses related to the services provided to eligible licensees. Those costs are undetermined.

According to the author's staff, they expect that usage of the program will be modest and are open to considering options that would decrease the costs of the program. In addition, the author is pursuing funding through the state budget to cover the program's costs.

The bill states that application or participation in the program shall not be used for purposes of discipline, which may place a board in a difficult position, since the bill requires applicants to apply through the boards for mental health treatment. Further, interested applicants may be hesitant to submit an application to their licensing boards indicating they require mental health treatment.

<u>FISCAL:</u>	Unknown, potentially major costs to the Board.
<u>SUPPORT:</u>	American College of Emergency Physicians, California Chapter California Academy of Family Physicians California Association of Health Facilities California Pharmacists Association California State Association of Psychiatrists Depression and Bipolar Support Alliance National Association of Social Workers, California Chapter
<u>OPPOSITION:</u>	None
<u>ATTACHMENT:</u>	<a href="#">AB 562, Low - Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: health care providers: mental health services.</a> Version: 04/08/21 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 852  
AUTHOR: Wood  
BILL DATE: April 18, 2022, Amended  
SUBJECT: Health Care Practitioners: Electronic Prescriptions:  
Nurse Practitioner Scope of Practice: Practice Without  
Standardized Procedures  
SPONSOR: None

DESCRIPTION OF CURRENT LEGISLATION

A “clean-up” bill to AB 890 of 2020 that granted authority to certain nurse practitioners (NP) to practice without physician supervision and AB 2789 of 2018 that required health care providers to issue their prescriptions electronically. This bill has an urgency clause, so it will take effect immediately upon approval of the Governor.

BACKGROUND

AB 890 (Wood) Chapter 265, Statutes of 2020 granted NPs authority to practice without physician supervision, as specified. AB 890 also established a new committee within the Board of Registered Nursing, which requires physician representation.

AB 2789 (Wood) Chapter 438, Statutes of 2018 requires, generally, effective January 1, 2022, health care practitioners authorized to issue prescriptions to submit them to a pharmacy via electronic data transmission prescriptions and requires pharmacies to have the capability to receive those transmissions. That bill created certain exemptions to the requirement to issue a prescription electronically, including temporary technological or electrical failures or that the prescription is to be dispensed outside California.

ANALYSIS

According to the author’s fact sheet:

“As part of implementation for both the above referenced bills, interested stakeholders have brought forward areas of ongoing concern or areas that lack clarity or specificity around author’s intent.”

As it relates to NPs, AB 852 includes references and incorporates the new categories of NPs who can work without standardized protocols into various code sections regulating healing arts licensees. Additionally, it clarifies the process by which county hospitals and clinics need to proceed when hiring an NP should a physician not be available to hire for a staff vacancy and clarifies when an NP needs to refer a patient who is decompensating in a manner inconsistent with an existing treatment plan.

The author's office indicates that these provisions have been agreed to by the California Medical Association and the NP community.

Regarding electronic prescribing, AB 852 makes the following changes to current law:

- Prohibits a pharmacy, pharmacist, or other practitioner authorized to dispense or furnish a prescription from refusing to dispense or furnish an electronic prescription solely because the prescription was not submitted via, or is not compatible with, their proprietary software.
- Permits a pharmacy, pharmacist, or other authorized practitioner to decline to dispense or furnish an electronic prescription submitted via software that fails to meet any one of specified criteria, including compliance with the federal Health Insurance Portability and Accountability Act of 1996.
- Allows a pharmacy to transfer an undispensed prescription to another pharmacy unless it violates state or federal law or the action is not supported by the National Council for Prescription Drug Programs SCRIPT standard.
- Adds the following additional exemptions to the requirement to issue a prescription electronically:
  - The prescription is issued by a prescribing health care practitioner serving as a volunteer in a free clinic and receives no remuneration for their services.
  - The prescriber registers annually with the California State Board of Pharmacy stating they meet one or more of the following criteria (and maintain documentation of the relevant circumstances):
    - Their practice is located in the area of an emergency or disaster declared by a federal, state, or local government.
    - They issue 100 or fewer prescriptions per calendar year.
    - They are unable to issue electronic data transmission prescriptions due to circumstances beyond their control.

Board staff have received complaints from licensees about the current electronic prescribing requirements, particularly from those who report they only write a small number of prescriptions and that it is cost prohibitive to adopt an electronic prescribing system for their practice. This bill would mitigate these concerns without substantially eroding the benefits of the broad requirement for prescriptions to be issued electronically. If warranted, the Board would be able to request documentation from its licensees to validate they qualify for the new exemptions created by the bill.

The provisions of the bill related to NPs and pharmacies are beyond the Board's jurisdiction, so staff recommend the Board limit the scope of its position on the provisions related to electronic prescribing.

FISCAL: None anticipated.

SUPPORT: California Medical Association

OPPOSITION: None

POSITION: Recommendation: Support

ATTACHMENT: [AB 852, Wood - Health Care Practitioners: Electronic Prescriptions: Nurse Practitioner Scope of Practice: Practice Without Standardized Procedures.](#)

Version: 04/18/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1102  
AUTHOR: Low  
BILL DATE: February 12, 2021, Introduced  
SUBJECT: Telephone Medical Advice Services  
SPONSOR: Low  
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION

This bill would specify that a telephone medical advice service is required to ensure that all health care professionals who provide telephone medical advice services from an out-of-state location are operating consistent with the laws governing their respective licenses. The bill would also specify that a telephone medical advice service is required to comply with all directions and requests for information made by the respective healing arts licensing boards.

**This bill has not been amended since the Board adopted a Support position.**

BACKGROUND

Prior law required businesses that employed, or contract or subcontract with, the full-time equivalent of five or more persons functioning as health care professionals, whose primary function is to provide telephone medical advice, that provided telephone medical advice services to a patient at a California address to be registered with the Telephone Medical Advice Services Bureau and further required telephone medical advice services to comply with the requirements established by the Department of Consumer Affairs (DCA).

However, the Telephone Medical Advice Services Bureau (Bureau) was sunset (abolished) as of January 1, 2017.

ANALYSIS

According to the author:

"This bill would clarify that the telephone medical advice companies must comply with directions and requests for information from not just the DCA, but also any licensing board that has jurisdiction over the type of advice being provided. Further, by virtue of hiring the professionals, the companies themselves may be providing services under state law. As a result, the oversight over these companies should be clarified to also include the licensing boards."

When the Bureau was abolished, enforcement was transferred to individual board through their existing authority over the practice of the relevant licensed practitioners.

However, the language still requires the companies to comply with DCA direction and requests for information.

The DCA has limited authority over licensing boards and their licensees. This bill would clarify that the enforcement of the regulation of telephone medical advice services is within the jurisdiction of the boards by requiring them to comply with directions and requests from the boards, not just DCA.

It would also clarify that a person who resides out of state and provides telephone medical advice in California must comply with the specific licensing requirements (e.g. not delinquent), not just the scope of practice requirements of their own state's license.

According to the DCA 2017 Annual Report, when the Bureau was abolished, it oversaw 68 registrants.

FISCAL: Minor and absorbable

SUPPORT: California Association of Orthodontists  
Medical Board of California

OPPOSITION: None

ATTACHMENT: [AB 1102, Low - Telephone Medical Advice Bureaus.](#)  
Version: 2/18/21 – Introduced

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1278  
AUTHOR: Nazarian  
BILL DATE: July 13, 2021, Amended  
SUBJECT: Physicians and Surgeons: Payments: Disclosure:  
Notice  
SPONSOR: The Center for Public Interest Law (CPIL)  
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION

Requires all physicians to provide a written notification informing patients of the federal Centers for Medicare and Medicaid Services (CMS) Open Payments online database and to post a similar notice in an area likely to be seen by patients in each office where they practice.

A violation of the requirements of the bill shall constitute unprofessional conduct.

**This bill has not been amended since the prior Board meeting.**

BACKGROUND

Current law requires a physician to maintain adequate and accurate records relating to the provision of services to their patients and states that failure to do so constitutes unprofessional conduct.

The Physician Payments Sunshine Act is a federal law that requires medical product manufacturers to disclose to CMS any payments or other transfers of value made to physicians or teaching hospitals. The intention of this law is to increase transparency regarding financial relationships between health care providers and pharmaceutical manufacturers.

According to a [report published by Pro Publica in 2019](#), based upon an analysis of the 50 most prescribed brand-name drugs in Medicare for which manufacturers made payments to physicians in 2016, “[on] average, across all drugs, providers who received payments specifically tied to a drug prescribed it 58% more than providers who did not receive payments.”

ANALYSIS

According to the Author:

"There is currently no state law requiring physicians/surgeons to communicate their financial relationships to patients. This bill empowers patients with relevant information from the Open Payments Database (that already exist) to ask questions about their care or treatment."

The bill contains two requirements. First, all physicians shall provide to patients at the initial office visit, and at annual office or telehealth visits, a written notice regarding the Open Payment database. The written disclosure shall include a signature from the patient or patient representative and the date of signature and the following text:

“The Open Payments database is a federal tool used to search payments made by drug and device companies to physicians and teaching hospitals. It can be found at <https://openpaymentsdata.cms.gov>.”

The bill requires physicians to include in the written or electronic records for the patient a record of this disclosure and requires the physician to provide the patient or patient representative a copy of the signed and dated disclosure.

Second, the bill requires a physician to post in each location where they practice, in an area likely to be seen, a notice regarding the open payments database. That notice shall include an internet website link to that database and the following text:

“For informational purposes only, a link to the federal Centers for Medicare and Medicaid Services (CMS) Open Payments web page is provided here. The federal Physician Payments Sunshine Act requires that detailed information about payment and other payments of value worth over ten dollars (\$10) from manufacturers of drugs, medical devices, and biologics to physicians and teaching hospitals be made available to the public.”

The bill states that for physicians employed by a health care employer, their employer shall be responsible for meeting the requirements of this bill. AB 1278 exempts a physician working in a hospital emergency room from its requirements.

### **Concerns from Physician and Drug/Device Manufacturers**

Opponents of AB 1278 generally argue that federal law is sufficient to support transparency and, therefore, the bill is duplicative. Other groups argue that the bill is burdensome to physicians and interferes with the patient-doctor relationship. The most recent amendments may have mitigated some of these concerns.

The California Medical Association (CMA) remains opposed to AB 1278, indicating that the requirement to annually inform patients of the Open Payments database places an undue burden on physicians to update their existing systems or create new ones. CMA argues that providing an initial disclosure, coupled with a posting in the lobby of a physician’s medical office is sufficient.

**FISCAL:** Minor and absorbable

**SUPPORT:** Association for Medical Ethics  
Breast Implant Safety Alliance

California Public Interest Research Group  
Consumer Attorneys of California  
Consumer Federation of California  
Consumer Watchdog  
Health Access California  
Heartland Health Research Institute  
Informed Patient Institute  
Mending Kids

OPPOSITION:

Advanced Medical Technology Association  
Association of Northern California Oncologists  
Biocom California  
Biotechnical Innovation Organization  
California Academy of Family Physicians  
California Medical Association  
California Life Sciences  
California Chapter, American College of Cardiology  
California Rheumatology Alliance  
California Society of Plastic Surgeons  
Liver Coalition of San Diego  
Medical Oncology Association of Southern California  
Osteopathic Physicians and Surgeons of California

ATTACHMENT:

[AB 1278, Nazarian - Physicians and Surgeons: Payment: Disclosure: Notice.](#)  
Version: 7/13/21 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1636  
AUTHOR: Weber  
BILL DATE: April 20, 2022, Amended  
SUBJECT: Physician's and Surgeon's Certificate: Registered Sex Offenders  
SPONSOR: California Medical Association

DESCRIPTION OF CURRENT LEGISLATION

Authorizes the Medical Board of California (Board) to deny a physician and surgeon (P&S) license application due to certain prior acts of professional sexual misconduct. Requires the Board to automatically revoke P&S licensees who were convicted of certain sexual crimes or committed professional sexual misconduct and deny petitions for reinstatement to individuals convicted of, or formally disciplined for, certain sexual offenses involving their current or former patients or clients, as specified.

RECENT AMENDMENTS

Since the prior Board meeting, AB 1636 was amended, as follows:

- License Denials
  - Removes the prior language related to license denials and instead amends BPC section 480 to expand the options to deny an applicant for a physician and surgeon (P&S) license if they were formally disciplined more than seven years ago by an agency outside California, that if it occurred in this state, would constitute a violation of BPC sections [726](#) or [729 \(a\)](#).
- Automatic Revocations
  - Requires automatic revocation of a P&S if the licensee is convicted of a sexual offense, as specified.
- License Reinstatement Petitions
  - Limits the prohibition on licensure reinstatement to individuals convicted of sexual offenses, or who were revoked by the Board for sexual misconduct, that involved current, or certain former, patients or clients.

BACKGROUND

Business and Professions Code (BPC) section [480](#) specifies the conditions that, generally, a licensing board must follow when considering whether to deny an application for licensure pursuant to the applicant's criminal history. Generally, a board

is limited to considering convictions within seven years preceding the date of application. That seven-year limitation does not apply to certain **(but not all)** felony convictions<sup>1</sup> that require registration as a sex offender or specified “serious” felonies<sup>2</sup>.

As of July 1, 2020, this section prohibits a licensing board from requiring an applicant to provide their criminal history and requires a licensing board to rely exclusively upon the conviction history of the applicant as indicated by the California Department of Justice (DOJ) pursuant to an analysis of the applicant’s fingerprints (either through a Live Scan, or a physical fingerprint card for out-of-state applicants). These reports are intended to include out-of-state convictions reported by other states.

Further, BPC section 480 does not allow a board to deny a license based on a conviction, including the underlying conduct, that has been dismissed or expunged. The Legislature did not exclude applicants convicted of sex offenses from this bar. This section also prohibits a board from denying a license to anyone, on the basis of a conviction of a crime, or on the basis of acts underlying a conviction, if that person obtains a certificate of rehabilitation, or has been granted clemency or a pardon, or met the rehabilitation criteria of BPC section [482](#). Again, the Legislature did not exclude individuals convicted of sex offenses.

Pursuant to BPC section 482, the Board adopted regulations<sup>3</sup> that govern how the Board considers whether an individual with a criminal conviction history has been rehabilitated.

BPC section [2221](#) requires the Board to deny a P&S application to anyone currently required to register as a sex offender in California.

Further, BPC section [2232](#) generally requires the Board to automatically revoke a licensee who is required to register as a sex offender in California. In addition, BPC section [2307](#) sets forth requirements related to the Board’s consideration of petitions for reinstatement and penalty relief filed by disciplined individuals.

## ANALYSIS

According to the author’s fact sheet:

“AB 1636 seeks to maintain confidence in the medical profession by ensuring physicians convicted of sexual misconduct with a patient would automatically have their license revoked and cannot acquire or have it reinstated.”

<sup>1</sup> BPC 480 specifies sexual offenses that require registration pursuant to paragraphs (2) and (3) of [Penal Code \(PC\) section 290 \(d\)](#).

<sup>2</sup> For the list of felonies, see [PC 1192.7](#).

<sup>3</sup> See [16 CCR section 1309](#).

As discussed below, this bill would place new requirements upon the Board regarding the denial of applications for licensure, automatic revocations, and petitions for reinstatement.

### **Denials of Licensure Applications**

This section of the bill was substantially amended following the Board's prior meeting. As currently drafted, the bill expands the options to deny an applicant for a (P&S) license if they were formally disciplined more than seven years ago by an agency outside California, that if it occurred in this state, would constitute a violation of BPC sections [726](#) or [729 \(a\)](#).

The prior version of the bill would have required the Board to deny an application for licensure under any of the following circumstances:

- Applicant is, or previously was, required to register as a sex offender, excluding a specified misdemeanor conviction<sup>4</sup>.
- Applicant was convicted in any court in or outside California for any offense that, if committed or attempted in this state, would require them to register as a sex offender. This would only be applicable if the applicant engaged in this conduct with a patient/client or with a former patient/client if the health care relationship was terminated for the purpose of committing the criminal offense.
- Applicant was formally disciplined by a licensing board in or outside California for conduct that, if committed by a P&S in this state would be a cause for discipline based on professional sexual misconduct in violation of BPC section [726](#) or [729 \(a\)](#).

### **Automatic Revocations**

AB 1636 requires the Board to automatically revoke a P&S license if the individual was convicted of a crime in any state, that if committed or attempted in this state would be subject to registration as a sex offender, pursuant to [Penal Code \(PC\) 290 \(c\)](#) in California.

The prior version of the bill limited certain revocation requirements if the licensee engaged in sexual misconduct with certain current or former patients or clients.

<sup>4</sup> Misdemeanor violations of [Penal Code section 314](#) are excluded.

## **Petitions for Reinstatement**

AB 1636 prohibits the Board from reinstating a licensee revoked under any of the following circumstances:

- The license was surrendered or revoked based on a finding by the Board that the person committed an act of sexual misconduct in violation of BPC section 726 or 729 (a).
- The licensee was convicted of a crime in any state, that if committed or attempted in this state would be subject to registration as a sex offender, pursuant to PC 290 (c) in California. This would only be applicable if the applicant engaged in this conduct with certain current or former patients or clients.
- The person has been required to register as a sex offender, except for certain misdemeanor convictions, if the crime involved certain current or former patients or clients.

Also, the bill deletes a pathway in BPC section 2232 that allows a revoked individual who was convicted of a sexual offense to petition the superior court to have their license reinstated.

## **Implementation Considerations**

This bill proposes to strengthen the laws that protect consumers from a P&S who has been convicted of sexual criminal offenses, with an emphasis on instances of sexual misconduct between a P&S and their current or former patients. Due to the recent amendments, some of the Board's previously requested amendments are obsolete.

### *Restrictions on Reinstatement*

The bill language disqualifying a person from being reinstated if they surrendered their license "based upon a finding by the board..." may not have the intended effect. When a P&S surrenders their license, there is not a finding by the Board, as the surrender is accepted by the Executive Director, prior to any decision of a Board disciplinary panel.

Further, for the sake of clarity, it would be helpful to specify in the bill language that the restrictions on reinstatement will impact surrenders and revocations that are effective on or after the effective date of the amendment to statute. This would be consistent with prior court decisions that prevent the Board from applying new requirements retroactively.

### *Recommended Amendments*

Staff recommend the Board adopt a Support, if Amended position with the following requested amendments to AB 1636:

- License Reinstatement

- Clarify that a license surrender following an accusation of a violation of BPC 726 or BPC 729 (a) disqualifies an individual from having their license reinstated.
- Clarify that the restrictions on reinstatement petitions apply to surrenders and revocations that are effective on or after the effective date of the amendment to statute.
- Ensure that the Board is required to deny a petition for reinstatement to a P&S whose license is revoked pursuant to BPC section 2232.

FISCAL: Possible savings to the Board.

SUPPORT: California Medical Association (sponsor)

OPPOSITION: Alliance for Constitutional Sex Offense Laws

POSITION: Recommendation: Support, if Amended

ATTACHMENT: [AB 1636, Weber – Physician’s and Surgeon’s Certificate: Registered Sex Offenders.](#)  
Version: 4/20/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1662  
AUTHOR: Gipson  
BILL DATE: April 27, 2022, Amended  
SUBJECT: Licensing Board: Disqualification from Licensure:  
Criminal Conviction  
SPONSOR: Council on State Governments – Justice Center  
POSITION: Support, if Amended

DESCRIPTION OF CURRENT LEGISLATION

Requires a licensing board within the Department of Consumer Affairs to provide a “preapplication determination” to a prospective applicant that indicates whether their criminal conviction history may disqualify them from licensure.

RECENT AMENDMENTS

On April 27, AB 1662 was amended, as follows:

- Recasts the requirement to accept and process a request for a preapplication determination into a new code section, with additional requirements (see analysis section for details).
- Allows boards to charge up to a \$50 fee to process a request for a preapplication determination.

BACKGROUND

Business and Professions Code (BPC) section [480](#) specifies the conditions that, generally, a licensing board must follow when considering whether to deny an application for licensure pursuant to the applicant’s criminal history. Generally, a board is limited to considering convictions within seven years preceding their date of application. That seven-year limitation does not apply to certain felony crimes<sup>1</sup> that require registration as a sex offender or specified “serious” felonies<sup>2</sup>.

As of July 1, 2020, this section prohibits a licensing board from requiring an applicant to provide their criminal history and requires a licensing board to rely exclusively upon the

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<sup>1</sup> BPC 480 specifies sexual offenses that require registration pursuant to paragraphs (2) and (3) of [Penal Code \(PC\) section 290 \(d\)](#).

<sup>2</sup> For the list of felonies, see [PC 1192.7](#).

conviction history of the applicant as indicated by the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) pursuant to an analysis of the applicant's fingerprints (either through a Live Scan, or a physical fingerprint card for out-of-state applicants).

Further, BPC section [2221](#) specifies additional conditions whereby the Medical Board of California (Board) may deny an application, or grant a probationary license, for a physician and surgeon (P&S) or postgraduate training license.

When Medical Board of California (Board) staff receive an application from an individual with a criminal conviction history, staff analyze what bearing that conviction has on the qualifications, functions, and duties related to the license they are seeking. Adopted pursuant to BPC section [482](#), the Board's regulations<sup>3</sup> require the Board to consider certain criteria when evaluating whether an applicant with a criminal conviction history has been rehabilitated. To complete this consideration, the Board is generally required to evaluate the applicant's conduct following their conviction, which may include their conduct while completing their required education and training (if completed following the conviction(s) in question).

For example, with P&S licensure applicants, the Board requires the medical school and postgraduate training programs to provide information about the applicant's performance and to disclose any issues that occurred during medical school or training. This information may be relevant to their criminal history and may be considered when evaluating an application.

In Fiscal Year (FY) 2020-21, the Board received approximately the following number of applications from individuals with a criminal conviction history:

- 53 P&S applicants
- 29 postgraduate training license applicants
- 2 polysomnography applicants

The Board did not deny any applicants for licensure due to their criminal conviction history in FY 2020-21 or FY 2019-20. The Board denied two applications related to the applicant's criminal conviction history in FY 2018-19 and five in FY 2017-18.

During their February 10-11 meeting, the Board adopted a Support, if Amended position, requesting the following amendments:

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<sup>3</sup> See [16 CCR section 1309](#)

- Clarify that any preapplication determination provided is only based upon the information provided by the requesting individual and is not binding upon the issuing licensing board.
- Establish a fee sufficient to address the Board's costs associated with completing a preapplication determination and to reimburse the Board for any costs related to the rulemaking process necessary to implement the bill.

## ANALYSIS

According to background information provided by the author's office, 21 states have a process in place for individuals to make a similar request, and further state:

"These mechanisms generally allow petitions to be filed at any time, including prior to meeting applicable education, training, and/or experiential requirements. A petitioner whose conviction is deemed disqualifying may be required to wait a number of years before filing a new petition. Preliminary determinations are not necessarily binding and may be reversed under certain circumstances like a conviction for a new offense."

As currently proposed, AB 1662 allows an applicant to request a preapplication determination whether their criminal conviction history could be cause for denial of a license issued by any licensing board. The bill allows their request to be filed at any time, including before they have obtained any training or education required for licensure.

As noted above, the Board receives a very low volume of applications from those with a criminal conviction history and, at least in the most recent fiscal year, did not deny anyone a license due to those circumstances. Boards may require the requestor to furnish their fingerprints to conduct a criminal history check.

If a board finds that the requestor's criminal history could be cause for denial of a license application, that board shall provide the requestor the following information:

- A summary of the criteria used by the board to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates.
- The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record.
- That the applicant would have the right to appeal the board's decision.
- Any existing procedure the board has for the prospective applicant would have to challenge the decision or to request reconsideration following the denial of a completed application, including a copy of the criteria relating to rehabilitation.

Boards are required to publish information on this process on their website and may charge a fee of up to a maximum of \$50 to administer the requirements of the bill.

### **Implementation Considerations**

The first of the Board's requested amendments has been addressed in the current version of the bill. The Board will only have to complete the preapplication determination based upon the requestor's fingerprint analysis (if required by the Board) and any other information voluntarily provided. Further, the Board is not required to make a binding determination.

The second request related to costs, has not been addressed. The bill provides for a maximum fee amount of \$50 per requestor, which is not sufficient to cover the Board's anticipated staff time necessary to process these requests. Further, the language of the bill does not make clear whether the fee is intended to also cover the Board's costs related to fingerprint processing by DOJ and the FBI.

Prior to accepting requests for preapplication determinations, Board staff expect that regulations will be required to establish the fee amount and other requirements related to this process.

### **Consideration of a Position**

Due to the ongoing cost concerns discussed above, the Board may wish to update its Support, if Amended position, and request the following amendments:

- Clarify that all costs associated with the requestor's fingerprint analysis are born by that individual.
- Remove the \$50 maximum fee amount, so that the Board may charge any fee amount necessary to cover the Board's reasonable costs to establish and administer this program.

**FISCAL:** Estimated costs between \$50,000 to \$100,000 related to application review, information technology, and rulemaking processes, which may be partly offset by fee revenue.

**SUPPORT:** Council on State Governments – Justice Center (sponsor)  
Institute for Justice  
Little Hoover Commission

**OPPOSITION:** Board for Professional Engineers, Land Surveyors, and Geologists  
Board of Psychology  
Dental Hygiene Board of California  
Naturopathic Medicine Committee  
Physical Therapy Board of California  
Speech-Language Pathology and Audiology and Hearing Aid  
Dispensers Board

ATTACHMENT: [AB 1662, Gipson – Licensing Board: Disqualification from Licensure: Criminal Conviction.](#)  
Version: 4/27/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1733  
AUTHOR: Quirk  
BILL DATE: January 31, 2022, Introduced  
SUBJECT: State Bodies: Open Meetings  
SPONSOR: None

DESCRIPTION OF CURRENT LEGISLATION

Modernizes the Bagley-Keene Open Meeting Act (the Act) to facilitate the use of teleconference-based public meetings, including online meetings. Requires a state body to provide the public the option to participate in teleconference-based meetings at either an in-person location or through an online or telephonic service, as defined.

BACKGROUND

The Act generally requires all state bodies, including the Medical Board of California (Board) to conduct business in meetings that are open to the public, publish their meeting agendas at least 10 calendar days prior to the meeting, and make their meeting materials available to the public.

The Act allows a state body to meet via teleconference, provided the public has access to the location where each board member of that body counting toward the quorum is joining the meeting. Due to the COVID-19 pandemic, under Executive Order No. N-29-20, between March 2020 and March 2022, state bodies were able to meet via teleconference without providing a physical location accessible to the public.

ANALYSIS

According to the author's fact sheet:

“AB 1733 modernizes the teleconferencing statute of Bagley-Keene to encourage more participation and engagement in public service. AB 1733 maintains that public meetings remain transparent, by requiring public meetings that are conducted via teleconference to be observable to the public both audibly and visually. AB 1733 also clarifies that members of a state body participating remotely shall count towards a quorum and would only require public disclosure of one designated primary physical meeting location from which the public may participate. It is also important to note that the reform in this bill is not replacing physical meetings, but authorizing state bodies to have the ability to have a meeting via teleconference in addition to a physical meeting location.”

AB 1733 would allow a state body to hold their public meetings entirely by teleconference or online software, like WebEx, like how the Board met under the now

expired Executive Order. The public must be allowed to participate through either a two-way audio-visual platform or a two-way telephonic service, as defined.

The key difference is that each state body must provide a public a physical location at which the public may hear, observe, and address the state body. Each physical location shall be identified in the notice of the meeting.

In addition, AB 1733, generally, provides for the following:

- Members of the state body may remotely participate in the meeting without disclosing their location or may decide to participate from the designated physical meeting location. Members remotely participating shall disclose whether any other individuals 18 years of age or older are present in the room with the member at their remote location and the general nature of the member's relationship to any such individuals.
- If the remote participation technology fails during the meeting and cannot be restored, the state body shall end or adjourn the meeting, and inform interested parties, as specified.
- Does not affect the requirements related to publishing a meeting notice.

### **Consideration of a Board Position**

The bill maintains public access and engagement at Board meetings and is expected to provide multiple benefits to the Board, including:

- Less staff time required to plan teleconference-based meetings
- Reduced need to travel will increase Board member and staff productivity
- Long term savings to the Board due to reduced travel and security expenses

FISCAL: Possible minor costs related to new technology needs, offset by savings related to avoided travel costs.

SUPPORT: Disability Rights California  
Little Hoover Commission  
State Bar of California  
Various boards within the Department of Consumer Affairs  
[partial list]

OPPOSITION: None

POSITION: Recommendation: Support

ATTACHMENT: [AB 1733, Quirk - State Bodies: Open Meetings.](#)  
Version: 01/31/22 – Introduced

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 2055  
AUTHOR: Low  
BILL DATE: April 21, 2022, Amended  
SUBJECT: Controlled Substances: CURES Database  
SPONSOR: California Medical Association

DESCRIPTION OF CURRENT LEGISLATION

Transfers the responsibility for the administration of the Controlled Substance Utilization Review and Evaluation System (CURES) from the California Department of Justice (DOJ) to the California State Board of Pharmacy (SBP).

BACKGROUND

Current law establishes the CURES program, which is a prescription drug monitoring program (PDMP), under the administration of DOJ. CURES generally requires prescribers to review CURES data prior to issuing a prescription for controlled substances to their patients. Generally, when a controlled substances is provided to a patient, the dispenser must report that information to CURES.

CURES is also used by various regulatory boards<sup>1</sup> under the Department of Consumer Affairs (DCA) (pursuant to their respective consumer protection authority), law enforcement, and statistical researchers. Prescribers and dispensers (except for those in a retired or inactive status) are currently required to pay an annual fee in the amount of eleven dollars to support the costs of the CURES program. That fee is scheduled to decrease to the amount of nine dollars starting April 1, 2023.

ANALYSIS

According to analysis of the Assembly Public Safety Committee, the author states:

“Currently, CURES remains housed under the DOJ because it evolved from early tools established primarily for law enforcement investigations. However, experts and policymakers now recognize that combating prescription drug abuse should be approached through a health-oriented lens, rather than through criminal prosecution. Forty-nine states have PDMPs like CURES; however, California is only one of four states that houses their PDMP in a law enforcement agency. While the Attorney General has worked laudably to advance the state’s progress

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<sup>1</sup> For example, the Medical Board of California (Board) relies upon CURES to investigate cases of possible inappropriate prescribing, such as through the Prescription Review Program.

against the opioid abuse crisis, CURES would be better positioned in a more health focus department.”

The analysis continues:

“Of the 50 programs throughout the nation, only four are housed at the state’s Department of Justice, 17 are housed at a state Department of Health or substance abuse agency, 19 are housed at a state Board of Pharmacy, and 7 are housed state professional licensing agency.”

Specifically, AB 2055 would do the following:

- Effective April 1, 2023, transfers full responsibility (including associated contracts and agreements) for the operation and maintenance of the CURES program from DOJ to SBP.
- Requires DOJ to provide staff support to SBP until January 1, 2024, until SBP hires its own staff.
- Requires SBP to revisit regulations adopted by DOJ related to access and use of information within CURES.
- Authorizes SBP to adopt emergency regulations to reorganize, clarify, or make consistent regulations, including those adopted by DOJ prior to April 1, 2023.

This bill does not change the scope or purpose of the CURES program.

### **Consideration of a Board Position**

Importantly, SBP adopted a Support, if Amended position on AB 2055, contingent upon delaying the transition to a date suitable to their needs and ensuring that SBP has sufficient resources to administer the program.

The primary users of the system are the licensees of the various DCA boards, with the dispensers of medications (mostly pharmacists) having responsibility to keep the CURES system up to date. Therefore, it is intuitive that the system be maintained by SBP.

Due to these considerations, Board staff recommend a Support, if Amended position consistent with the position of SBP.

FISCAL: None identified.

SUPPORT: California Medical Association (sponsor)  
American College of Obstetricians and Gynecologists District IX  
California Orthopedic Association  
California State Board of Pharmacy (if Amended)

OPPOSITION: None

POSITION: Recommendation: Support, if Amended

ATTACHMENT: [AB 2055, Low – Controlled Substances: CURES Database.](#)  
Version: 4/21/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 2060  
AUTHOR: Quirk  
BILL DATE: April 20, 2022, Introduced  
SUBJECT: Medical Board of California  
SPONSOR: Medical Board of California

DESCRIPTION OF CURRENT LEGISLATION

Changes the composition of the Medical Board of California (Board) from a physician-member majority to a public-member majority. Allows the Board to determine the composition of disciplinary panels, except that each shall have no fewer than four members.

BACKGROUND

During their February 10-11, 2022, meeting, the Board voted to sponsor legislation that would change the Medical Practice Act (MPA), as follows:

- Change the Board's composition to a public member majority by replacing one physician and surgeon (P&S) member with a public member. The change would not occur until the first physician and surgeon position becomes vacant following the effective date of this bill.
- Due to the reduction of one P&S member, the bill would similarly reduce by one the minimum number of P&S members who must hold faculty appointments in a medical school. It would also make non-substantive updates to antiquated language.
- Update the composition of the Board's disciplinary panels to reflect the public member majority by stating that P&S members may not exceed the number of public members assigned to a panel.

The language approved by the Board was included in the introduced version of AB 2060.

ANALYSIS

During its consideration by the Assembly Committee on Business & Professions, AB 2060 was amended, at the request of the committee, to amend the language to allow the Board to determine the composition of the disciplinary panels. The committee analysis argued that the Board should have flexibility to maintain the current panel requirements. The current version of the bill does not impede the Board from creating panels that have a majority of public members, or an equal number of public and physician members.

The bill's opponents argue that the current Board composition is appropriate to balance the voices of physician and public members and that physicians are better equipped to understand the standard of care, ethical obligations, professional competency responsibilities, and other matters pertaining to the practice of medicine that relate to the role of a Board member.

They further argue that this change could lead to additional costs to the Board and court system to defend its disciplinary decisions in the court system if non-physician majority panels improperly discipline a licensee.

Staff strongly disagree with these arguments and indicate that the Board relies upon medical expert opinions to advise on departures from the standard of care and that the bill preserves a substantial voice for physician Board members. Staff have asked opponents to provide evidence to support their claim that the bill will increase financial risk to the Board and are awaiting their response.

FISCAL: No costs to the Board.

SUPPORT: Medical Board of California (Sponsor)  
A Voice for Choice Advocacy  
Consumer Protection Policy Center  
Consumer Watchdog

OPPOSITION: California Medical Association  
California Orthopaedic Association

ATTACHMENT: [AB 2060, Quirk – Medical Board of California](#)  
Version: 4/20/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 2098  
AUTHOR: Low  
BILL DATE: April 20, 2022, Amended  
SUBJECT: Physicians and Surgeons: Unprofessional Conduct  
SPONSOR: California Medical Association

DESCRIPTION OF CURRENT LEGISLATION

Establishes that the dissemination of misinformation or disinformation related to COVID-19 by a physician and surgeon (P&S) constitutes unprofessional conduct, as defined. The bill impacts licensees of the Medical Board of California (Board) and the Osteopathic Medical Board of California.

BACKGROUND

Under the Medical Practice Act (MPA), it is unprofessional conduct for any P&S to diagnose or treat their patient in violation of the standard of care, regardless of the malady that their patient is experiencing. A failure to adhere to the standard of care will subject the license of a P&S to discipline.

Prior to filing an accusation and disciplining a licensee, the Board must discover clear and convincing evidence that the licensee in question has violated the MPA. Generally, the Board is not required to establish that a patient was harmed prior to disciplining a licensee for a violation of the MPA.

When conducting an investigation, the most efficient method to obtain a copy of medical records is when the patient in question authorizes their P&S to provide their records to the Board. If the Board knows the identity of the patient, but the patient refuses to consent to release of their records, the Board may seek a subpoena to compel the production of those records if the Board has good cause.

[Business and Professions Code \(BPC\) section 651](#) states that it is unlawful for licensed healthcare professionals to disseminate, or cause to be disseminated, a public communication containing a false, fraudulent, misleading, or deceptive message for the purpose of, or likely to induce, the rendering of professional services or products connected to their licensed practice.

[BPC section 2220.05](#) establishes the Board's priorities for the purpose of maximizing its investigative and prosecutorial resources.

[BPC section 2234.1](#) states that a P&S shall not be subject to discipline solely based on rendering to a patient alternative or complementary medicine, as defined.

## ANALYSIS

As provided in the analysis published by the Assembly Business and Professions Committee:

“According to the author: AB 2098 is crucial to addressing the amplification of misinformation and disinformation related to the COVID-19 pandemic. Licensed physicians, doctors, and surgeons possess a high degree of public trust and therefore must be held accountable for the information they spread. Providing patients with accurate, science-based information on the pandemic and COVID-19 vaccinations is imperative to protecting public health. By passing this legislation, California will show its unwavering support for a scientifically informed populous to protect ourselves from COVID-19.”

It is well established that the Board may discipline a licensee for a violation of the standard of care. When a P&S does violate the standard of care, they may have communicated some amount of “misinformation” related to the nature of the patient’s condition and appropriate treatments. This bill establishes a separate cause for discipline specifically for a P&S who disseminates misinformation or disinformation to a patient under their care related to COVID-19.

### **Implementation Considerations**

#### Current Investigation Challenges

The Board faces considerable challenges investigating cases involving a violation of the MPA related to COVID-19. Typically, complaints received by the Board pertaining to COVID-19 are made by a member of the public and not the patient of the physician. In some COVID-19 related investigations, the Board is unable to identify any specific patients who have been treated by the physician in question. Without a patient’s name (for any investigation), it is impossible to obtain their consent for records and the Board will be unable to identify what patient records to subpoena and the bases supporting good cause<sup>1</sup> for an investigative subpoena.

To help overcome this challenge that appears in a variety of circumstances, the Board proposed amendments to the MPA in its 2020 Sunset Review Report<sup>2</sup> and in its 2022 legislative priorities memo<sup>3</sup> that would provide enhanced medical record inspection authority. The proposal would authorize a Board investigator to inspect medical records in the possession of a licensee for the limited purpose of determining whether good

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<sup>1</sup> Generally, to have good cause, a Board investigator must be able to show that the subpoenaed records are necessary to advance the Board’s interest and that the scope of the requested records is carefully tailored to the Board’s need.

<sup>2</sup> See p. 212-215: <https://www.mbc.ca.gov/Download/Reports/sunset-report-2020.pdf>

<sup>3</sup> See p. 7: <https://www.mbc.ca.gov/Download/Documents/MBCLegislativeRequests-20220105.pdf>

cause exists to seek an investigative subpoena. A version of this authority was included in SB 920 (Hurtado).

### Challenges Specific to AB 2098

The bill focuses on misinformation and disinformation disseminated from a licensee to a patient under their care. Unless the patient in question (or someone who knows the patient's name) files the complaint and consents to release their medical records to the Board, as described above, the Board will likely face significant challenges enforcing AB 2098.

Under this bill, prior to filing an accusation on this subject, the Board "...shall consider both whether the licensee departed from the applicable standard of care and whether the misinformation or disinformation resulted in harm to patient health." This language appears to be advisory in nature, as it does not clearly state whether the Board is required to establish that the licensee in question both violated the standard of care and the misinformation or disinformation led to patient harm prior to bringing disciplinary action. Some, however, may argue that this is intended to require the Board to meet both criteria prior to filing an accusation.

The definitions of misinformation and disinformation are also key considerations for the Board's implementation of this proposed new statute. In the bill, they currently read as follows:

- "Misinformation" means false information that is contradicted by contemporary scientific consensus to an extent where its dissemination constitutes gross negligence by the licensee."
- "Disinformation" means misinformation that the licensee deliberately disseminated with malicious intent or an intent to mislead."

The definition of misinformation is unclear and may lead to legal challenge following the imposition of discipline under this proposed law.

Further, the Board may face significant challenges proving the dissemination of disinformation, as it would be required to establish the intent of the P&S. Under current law, to prove a violation of the standard of care, the intent of the licensee, generally, is not relevant.

Additionally, only violations of the law that occurred on or after January 1, 2023, are eligible under this bill. Although staff anticipate a large initial volume of complaints, AB 2098 is not expected to lead to a significant volume of new actionable complaints as any cases related to this bill would likely also involve a violation of the standard of care of treatment for COVID-19, which is already a violation of the MPA.

## Possible Amendments for Board Consideration

Considering the implementation challenges noted above, the Board may wish to incorporate certain amendments as it considers a position on AB 2098:

First, provide the Board enhanced authority to inspect medical records as indicated in the Board's requests in its 2020 Sunset Review Report and 2022 legislative proposals memo.

Second, amend the proposed BPC section 2270, as follows:

- Strike subdivision (b). Given the construction of the rest of the section, this language is unnecessary to bring an action against a licensee.

Further, removing it would provide the Board additional flexibility to pursue these types of cases and eliminate doubt whether the Board must establish whether it must prove both a violation of the standard of care and patient harm prior to bringing a disciplinary action.

- Amend paragraph 3 of subdivision (c), as follows (new additions in *blue italics* and deletions in ~~red strikeout~~):

"Misinformation" means false information that is contradicted by contemporary scientific consensus *contrary to the standard of care* ~~to an extent where its dissemination constitutes gross negligence by the licensee.~~

This amendment connects the potential violation to the standard of care, which is a well-established concept followed by the Board and related administrative entities involved in the disciplinary process.

FISCAL: Minor and absorbable costs required to process an initial influx of complaints after the bill is enacted. However, no new ongoing costs are anticipated.

SUPPORT: California Medical Association (Sponsor)  
American Academy of Pediatrics, California  
American College of Obstetricians and Gynecologists District IX  
CA Chapter of the American College of Emergency Physicians  
California Podiatric Medical Association  
California Rheumatology Alliance  
California Society of Anesthesiologists  
Children's Specialty Care Coalition  
Families for Opening Carlsbad Schools

OPPOSITION: A Voice for Choice Advocacy  
California Health Coalition Advocacy  
Californians for Good Governance  
Catholic Families 4 Freedom CA  
Central Coast Health Coalition  
Children's Health Defense California Chapter  
Concerned Women for America  
Depression and Bipolar Support Alliance California  
Educate. Advocate.  
Frederick Douglass Foundation of California  
Homewatch Caregivers of Huntington Beach  
Nuremberg 2.0 LTD.  
Pacific Justice Institute  
Physicians for Informed Consent  
Protection of the Educational Rights for Kids  
Restore Childhood  
Siskiyou Conservative Republicans  
Stand Up Sacramento County

POSITION: Recommendation: Support, if Amended

ATTACHMENT: [AB 2098, Low - Physicians and Surgeons: Unprofessional Conduct.](#)  
Version: 04/20/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 2178  
AUTHOR: Bloom  
BILL DATE: February 15, 2022, Introduced  
SUBJECT: Physicians and Surgeons: Special Faculty Permits:  
Academic Medical Center  
SPONSOR: Cedars-Sinai

DESCRIPTION OF CURRENT LEGISLATION:

Clarifies the definition of “academic medical center” for purposes of obtaining a special faculty permit under the Medical Board of California (Board).

BACKGROUND:

Under prior law, only medical schools approved by the Medical Board of California (Board) were authorized to sponsor applicants for a special faculty permit (SFP). Two legislative bills were enacted in recent years to expand access to the SFP program to academic medical centers (AMC) that met certain requirements.

[Assembly Bill 2273 of 2020](#) changed the law, as follows:

- Defined an AMC as an entity that meets all the following criteria:
  - A facility licensed by the State of California.
  - The facility conducts both internal and external peer review of the faculty for the purpose of conferral of academic appointments on an ongoing basis.
  - The facility conducts clinical and basic research for the purpose of advancing patient care.
  - The facility trains a minimum of 250 residents and postdoctoral fellows on an annual basis commencing each January 1.
  - The facility has more than 100 research students or postdoctoral researchers annually.
  - The facility has foreign medical graduates in clinical research.
  - The facility offers clinical observership training.

- The facility has an intern and resident-to-bed ratio meeting the federal Centers for Medicare and Medicaid Services definition as a major teaching hospital and conducts research in an amount of one hundred million dollars (\$100,000,000) or more annually.
- Expanded SFP program eligibility to the following individuals:
  - Someone offered a full-time appointment at the level of full professor in a tenure track position (or its equivalent) at an AMC; or
  - Someone clearly outstanding in a specific field of medicine or surgery who was offered a full-time academic appointment at the level of full professor or associate professor by the dean or chief medical officer of an AMC
- Added one person to the Special Faculty Permit Review Committee (SFPRC) who will represent all AMCs.
  - Specifies that if there is more than one AMC approved by the Board, that the AMCs shall select by consensus one person to represent all AMCs on the SFPRC.
- Allows the Board to approve no more than five SFP applicants sponsored by AMCs in any calendar year.

[Senate Bill 806 of 2021](#) deleted the intern/resident bed ratio and \$100,000,000 annual research AMC requirements. The bill added a requirement that AMCs be accredited by the Western Association of Schools and Colleges and the Accreditation Council for Graduate Medical Education.

The only AMC recognized by the Board is Cedars-Sinai Medical Center.

ANALYSIS:

According to the author and sponsor, certain current definitions of an AMC do not align with academic medical terms or accurately reflect the types of trainees supported and experiences offered at these institutions. This bill is intended to correct those definitions without substantively changing the requirements to qualify as an AMC.

AB 2178 updates certain AMC requirements, as follows (deletions shown in ~~red~~ ~~strikeout~~ and additions in *blue italics*):

- The facility trains a minimum of 250 residents and ~~postdoctoral~~ fellows on an annual basis commencing each January 1.
- The facility has foreign medical graduates in ~~clinical~~ research.
- The facility offers clinical ~~observership training~~. *observer experiences*.

FISCAL: No fiscal impact anticipated.

SUPPORT: Cedars-Sinai (Sponsor)

OPPOSITION: None

POSITION: Recommendation: Support

ATTACHMENT: [AB 2178, Bloom. Physicians and Surgeons: Special Faculty Permits: Academic Medical Center.](#)

Version: 2/15/22 – Introduced

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 2626  
AUTHOR: Calderon  
BILL DATE: April 18, 2022, Amended  
SUBJECT: Medical Board of California: Licensee Discipline:  
Abortion  
SPONSOR: None

DESCRIPTION OF CURRENT LEGISLATION

Prohibits the Medical Board of California (Board) and other licensing boards from disciplining a licensee for performing an abortion in accordance with the Medical Practice Act (MPA) and the Reproductive Privacy Act.

BACKGROUND

Current law sets forth the requirements related to the performance of an abortion by certain authorized licensed health care professionals, including physician and surgeons, osteopathic physicians and surgeons, nurse practitioners, nurse-midwives, and physician assistants. Those requirements are set forth in the respective practice acts of the various licensing boards and the Reproductive Privacy Act, among other provisions.

Recently, various states have enacted legislation that shortens the window of time for a person to obtain an abortion in those states. In Texas, for example, abortions may not be performed, or aided and abetted, by anyone after the detection of a fetal heartbeat.

The MPA authorizes the Board to discipline a licensee who has been disciplined by another state for unprofessional conduct, if conduct is also a violation of California law.

ANALYSIS

As provided in the analysis published by the Assembly Health Committee:

“According to the author, with 26 states actively seeking to ban abortion, the Guttmacher Institute expects an increase of up to 1.4 million out-of-state individuals of reproductive age finding their nearest clinic in California. Many states across the country are specifically targeting providers by authorizing state officials to revoke, suspend, or restrict a license for performing an abortion. The author states that this bill protects California providers by preventing the MBC from revoking or suspending a medical license of a licensee for providing or coordinating abortion care in other states and to Californians or any out-of-state patients seeking care in California.”

Under current law, the Board may discipline a licensee for out-of-state discipline pursuant to Business and Professions Code section 141, 2305, and 2310 but only acts when the out-of-state conduct violates the MPA.

This bill reaffirms in the MPA that the Board may not discipline a licensee solely for performing an abortion in accordance with the MPA and the Reproductive Privacy Act.

Therefore, AB 2626 is not anticipated to impact the Board’s disciplinary program.

FISCAL: None for the Board

SUPPORT: Access Reproductive Justice  
American College of Obstetricians and Gynecologists District IX  
ANSIRH (Advancing New Standards in Reproductive Health)  
California Latinas for Reproductive Justice  
California Nurse Midwives Association  
Essential Access Health  
NARAL Pro-choice California  
National Council of Jewish Women-California  
Planned Parenthood Affiliates of California  
Women's Foundation California  
[partial list]

OPPOSITION: None

POSITION: Recommendation: Support

ATTACHMENT: [AB 2626, Calderon - Medical Board of California: Licensee Discipline: Abortion](#)  
Version: 04/18/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 57  
AUTHOR: Wiener  
BILL DATE: January 18, 2022, Amended  
SUBJECT: Controlled Substances: Overdose Prevention Program  
SPONSOR: California Association of Alcohol & Drug Program Executives; California Society of Addiction Medicine; Drug Policy Alliance; National Harm Reduction Coalition; Healthright 360, San Francisco AIDS Foundation; Tarzana Treatment Center  
POSITION: Neutral

DESCRIPTION OF CURRENT LEGISLATION

This bill authorizes certain local governments to establish overdose prevention programs (OPP) within their respective jurisdiction. Further, the bill would protect a person or entity from certain civil, criminal administrative, and professional disciplinary liability for their good faith involvement in the operation of an OPP, as specified.

The bill specifies that the civil, administrative, and professional disciplinary protection does not pertain to actions performed in a grossly negligent manner or in bad faith. The language, however, allows the Medical Board of California (Board) and Osteopathic Medical Board of California to take disciplinary action against its licensees.

RECENT AMENDMENTS AND ACTION

On January 3, 2022, the bill was amended to update the sunset date for the program established by the bill to be January 1, 2028, and update co-authors.

On January 18, 2022, SB 57 was amended to require the jurisdictions that choose to participate in the program to select an independent entity to conduct a peer-reviewed study of the statewide efficacy of the program, to be submitted to the Legislature and the Governor's Office on or before January 15, 2027.

**The recent amendments to SB 57 do not alter the Board's authority to take appropriate administrative or disciplinary action against licensees who fail to meet the standard of care in relation to the operation of an OPP. The bill has not been amended since the prior Board meeting.**

BACKGROUND

Existing law, the Medical Practice Act, establishes the Board for the licensure and regulation of physicians and surgeons. Pursuant to current law and practice, the Board investigates every complaint received pertaining to its licensees, as appropriate, including cases relating to the quality of care provided to consumers. If warranted by the

circumstances, and related evidence, licensees who do not adhere to the relevant standard of care may receive discipline against their license, including probation, suspension, or revocation. For technical and/or minor violations of the law, the Board may issue a citation and fine.

Various provisions of law state that possession, use (or being in the same location with knowledge of the use), or owning or maintaining a place for the use, of controlled substances is a crime.

## ANALYSIS

According to the author:

California is in the midst of an unprecedented overdose crisis that must be treated as a public health crisis. Since 2011, drug overdose has been the leading cause of accidental death among adults in California. Overdose prevention programs, also called supervised consumption services, are a necessary intervention to prevent overdose deaths. Approximately 165 OPPs exist in 10 countries, and they have been rigorously researched and shown to reduce health and safety problems associated with drug use, including public drug use, discarded syringes, HIV and hepatitis infections, and overdose deaths.

The bill includes various findings and declarations, including the following:

- OPPs are an evidence-based harm reduction strategy that allows individuals to consume drugs in a hygienic environment under the supervision of staff trained to intervene if the individual overdoses. OPPs also provide sterile consumption equipment and offer general medical advice and referrals to substance use disorder treatment, housing, medical care, and other community social services.
- Expresses the intent of the Legislature to prevent fatal and nonfatal drug overdoses, reduce drug use by providing a pathway to drug treatment, as well as medical and social services for high-risk drug users (many of whom are homeless, uninsured, or very low income), prevent the transmission of HIV and hepatitis C, reduce nuisance and public safety problems related to the public use of controlled substances, and reduce emergency room use and hospital utilization related to drug use.

SB 57 establishes a temporary program (until January 1, 2028) that allows the City and County of San Francisco, the City of Los Angeles, the County of Los Angeles, and the City of Oakland to establish an OPP within their respective jurisdictions. The bill establishes various requirements that an entity must comply with to operate an OPP, including, but not limited to:

- Provide a hygienic space to consume controlled substances under supervision of staff trained to prevent and treat drug overdoses.
- Provide sterile consumption supplies, collect used equipment, and provide secure hypodermic needle and syringe disposal services.

- Monitor participants for potential overdose and provide care as necessary to prevent fatal overdose.
- Provide access or referrals to substance use disorder treatment services, primary medical care, mental health services, and social services.
- Educate participants on preventing transmission of HIV and viral hepatitis.
- Provide overdose prevention education and access to or referrals to obtain naloxone hydrochloride or another overdose reversal medication approved by the United States Food and Drug Administration.
- Require all staff present during open hours be certified in cardiopulmonary resuscitation (CPR) and first aid.
- Require all staff present at the program during open hours be authorized to provide emergency administration of an opioid antagonist and be trained for administration of an opioid antagonist.

SB 57 requires the jurisdictions that choose to participate in the program to select an independent entity to conduct a peer-reviewed study of the statewide efficacy of the program, to be submitted to the Legislature and the Governor’s Office on or before January 15, 2027.

FISCAL: None

SUPPORT: The City of Oakland  
The City of San Francisco  
County of Los Angeles  
County Behavioral Health Directors Association of California  
Harm Reduction Coalition (partial list)

OPPOSITION: California Association of Code Enforcement Officers  
California State Sheriffs’ Association  
Peace Officers’ Research Association of California  
California District Attorney’s Association (partial list)

ATTACHMENT: [SB 57, Wiener - Controlled Substances: Overdose Prevention Program](#)  
Version: 01/18/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 528  
AUTHOR: Jones  
BILL DATE: May 25, 2021, Amended  
SUBJECT: Juveniles: Health Information Summary: Psychotropic  
Medication  
SPONSOR: California Academy of Child and Adolescent  
Psychiatry  
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION

This bill requires the California Department of Social Services (CDSS) to create an electronic health care portal, through which health care providers will be able to access health information included in a foster child or youth's health and education summary, as provided. The portal must also include completed and approved forms developed by the Judicial Council relating to the administration of psychotropic medication for specified dependent children and wards of the juvenile court.

**The bill has not been amended since the prior Board meeting.**

BACKGROUND

Current law sets forth the prioritization of the allegations received by Medical Board of California (Board). Specifically, Business and Professions Code (BPC) section 2220.05 includes the investigation of allegations pertaining to "repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to a minor without a good faith prior examination of the patient and medical reason therefor."

In 2015, the California State Auditor released a report regarding California's foster care system and found that the state and counties failed to adequately oversee the prescription of psychotropic medications to children in foster care. According to this report, the fragmented structure of the state's child welfare system has contributed to its failure to ensure it has the data necessary to monitor the prescription of psychotropic medications to foster children.

ANALYSIS

According to the author:

"[F]oster youth, some of our most vulnerable children, frequently change the health providers they see or the foster families they live with, for reasons beyond their control. Oftentimes, their changing lives lead to a loss of critical health records, such as the prescription of antidepressants, mood stabilizers, antipsychotics, and other psychotropic medications. Without a documented

record, any attempt to resume use of these medications is greatly complicated. This bill will create a universal electronic health care portal for foster youth, allowing them to stabilize and maintain their personal health regimen.”

The electronic health care portal required by the bill shall include health and education summary information for a child in foster care and forms required by the Judicial Council relating to the administration of psychotropic medication for certain children removed from the physical custody of their parent.

The bill further requires a foster care public health nurse to add and update the above-described information and requires health care providers to children in foster care to have access to that health care portal.

**Impact to the Consumer Protection Mission of the Board**

In addition to the benefit the bill provides to support continuity of care for such a vulnerable patient population, this bill may ease the Board’s access to medical records necessary to investigate possible violations of the Medical Practice Act with regard to children in foster care.

FISCAL: None for the Board

SUPPORT: California State Association of Psychiatrists  
County Behavioral Health Directors Association of California

OPPOSITION: Service Employees International Union California

ATTACHMENT: [SB 528, Jones - Juveniles: Health Information Summary: Psychotropic Medication.](#)  
Version: 05/25/21 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 1365  
AUTHOR: Jones  
BILL DATE: February 18, 2022, Introduced  
SUBJECT: Licensing Boards: Procedures  
SPONSOR: Little Hoover Commission

DESCRIPTION OF CURRENT LEGISLATION

Requires each board and bureau within the Department of Consumer Affairs (DCA) to publicly post on its website a list of criteria used to evaluate applicants with criminal convictions; and requires the department to assist each board in developing an informal appeals process and disseminate materials to each board on assisting applicants with criminal convictions to gain employment, as specified.

BACKGROUND

Business and Professions Code (BPC) section [480](#) (pursuant to AB 2138 of 2018) specifies the conditions that, generally, a licensing board must follow when considering whether to deny an application for licensure pursuant to the applicant's criminal history. Generally, a board is limited to considering convictions within seven years preceding their date of application. That seven-year limitation does not apply to certain felony crimes<sup>1</sup> that require registration as a sex offender or specified "serious" felonies<sup>2</sup>.

As of July 1, 2020, this section prohibits a licensing board from requiring an applicant to provide their criminal history and requires a licensing board to rely exclusively upon the conviction history of the applicant as indicated by the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) pursuant to an analysis of the applicant's fingerprints (either through a Live Scan, or a physical fingerprint card for out-of-state applicants).

When Medical Board of California (Board) staff receive an application from an individual with a criminal conviction history, staff analyze what bearing that conviction has on the qualifications, functions, and duties related to the license they are seeking. Adopted pursuant to BPC section [482](#), the Board's regulations<sup>3</sup> require the Board to consider certain criteria when evaluating whether an applicant with a criminal conviction history has been rehabilitated. To complete this consideration, the Board is generally required

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<sup>1</sup> BPC 480 specifies sexual offenses that require registration pursuant to paragraphs (2) and (3) of [Penal Code \(PC\) section 290 \(d\)](#).

<sup>2</sup> For the list of felonies, see [PC 1192.7](#).

<sup>3</sup> See [16 CCR section 1309](#)

to evaluate the applicant's conduct following their conviction, which may include their conduct while completing their required education and training (if completed following the conviction(s) in question).

For example, with P&S licensure applicants, the Board requires the medical school and postgraduate training programs to provide information about the applicant's performance and to disclose any issues that occurred during medical school or training. This information may be relevant when reviewing their criminal history and rehabilitation efforts and may be considered when evaluating an application.

In Fiscal Year (FY) 2020-21, the Board received approximately the following number of applications from individuals with a criminal conviction history:

- 53 P&S applicants
- 29 postgraduate training license applicants
- 2 polysomnography applicants

The Board did not deny any applicants for licensure due to their criminal conviction history in FY 2020-21 or FY 2019-20. The Board denied two applications related to the applicant's criminal conviction history in FY 2018-19 and five in FY 2017-18.

Similar topics are discussed in the analysis of AB 1662 (Gipson); see **Board Agenda item 14.A.6.** for additional information.

## ANALYSIS

According to author's fact sheet:

"The current laws for licensure make it difficult for the formerly incarcerated population to apply for licenses. There is limited information and few resources available to support these individuals as they apply. Therefore, there is a growing need for clearer instructions and better transparency of this process, so all applicants are aware of the existing rules of each license.

The current process does not include a step to provide court documents describing the individual's criminal history. Since the actual court documents are not required, there is often confusion on what the individual's particular conviction was, and thus whether or not they would be able to qualify for licensure.

Furthermore, in the event the applicant is denied, the process for filing an appeal is complicated and unclear, causing an undue barrier to obtaining a license."

The boards and bureaus within DCA have unique requirements for their licensees. Further, due to the differences between the various types of regulated professions and

the judgment of those who lead those entities, the impact of prior criminal behavior on licensing decision may vary significantly.

As indicated above, the Board receives very few applications from individuals with a criminal conviction history and historically denies few, if any, due to that reason. Nevertheless, the Board would be required to comply with the requirements of this bill.

SB 1365 requires the following:

- Each board to post on its internet website a list of criteria used to evaluate applicants with criminal convictions so that potential applicants for licensure may be better informed about their possibilities of gaining licensure before investing time and resources into education, training, and application fees (this was already accomplished when the Board [posted online its regulations](#) adopted pursuant to AB 2138).
- Requires DCA to:
  - Establish a process to assist each board comply with the above internet posting requirement.
  - Disseminate materials to, and serve as a clearing house for, boards in order to provide guidance and best practices in assisting applicants with criminal convictions gain employment.
  - Develop a process for each board to use in verifying applicant information and performing background checks of applicants.
    - In developing this process, a board may examine the model used by the Department of Insurance (DOI) to perform background checks (according to the [DOI website](#), their process includes a requirement to disclose their criminal conviction history, which is prohibited under AB 2138).
  - Develop a procedure to provide for an informal appeals process.
    - In developing this informal appeals process, DCA may examine the model for informal appeals used by the Bureau of Security and Investigative Services. The informal appeals process shall occur after an initial license denial and before an administrative law hearing.

As stated in the Senate Public Safety Committee hearing on April 26, opponents generally argue that the bill oversimplifies the process and tailored requirements that each board and bureau within DCA follows by attempting to impose a single process on all those entities. Further, they point out that the language increases the burden on

applicants by requiring them to provide certified copies of court records to a board or bureau. They indicate that AB 2138 already created a common process across DCA that respects the necessary differences amongst the Boards and that bill is likely to further confuse applicants and ultimately harm their interests.

### **Consideration of a Board Position**

The bill does not propose any new fee authority to fund the requirements on DCA (which will likely be recouped through increased pro-rata payments by the boards) or the boards. Board staff expect that regulations to develop an informal appeals process will be necessary.

Further, given the low volume of Board applicants with criminal conviction histories and denials, and the arguments put forth by the opponents, it is unclear how the bill will ultimately benefit the Board's applicants. Board staff estimate that an additional one-half time staff member is necessary to administer this process and that other staff time will be required to create regulations.

Due to the above factors, staff recommend an Oppose position on SB 1365.

FISCAL: Estimated first year costs of about \$60,000 with ongoing costs of \$40,000 annually.

SUPPORT: Little Hoover Commission (sponsor)

OPPOSITION: ACLU California Action  
Dental Hygiene Board of California  
Root & Rebound

POSITION: Recommendation: Oppose

ATTACHMENT: [SB 1365, Jones – Licensing Boards: Procedures.](#)  
Version: 2/18/22 – Amended

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 1440  
AUTHOR: Roth  
BILL DATE: February 18, 2022, Introduced  
SUBJECT: Licensed Midwifery Practice Act of 1993: Complaints  
SPONSOR: None

DESCRIPTION OF CURRENT LEGISLATION

Makes clarifying changes to one section of the Licensed Midwifery Practice Act of 1993 (LM Act).

BACKGROUND

The LM Act provides for the licensure and regulation of licensed midwives (LM) by the Medical Board of California (Board).

SB 806 (Roth) of 2021 added [Business and Professions Code \(BPC\) section 2519.5](#) which provides criteria for the Board to follow when reviewing quality-of-care complaints involving a LM. That section is very similar to [BPC section 2220.08](#), which pertains to quality-of-care complaints relating to a physician and surgeon (P&S).

ANALYSIS

This bill provides a technical amendment to BPC section 2519.5 so that it conforms, in relevant part, to BPC section 2220.08. SB 1440 renumbers subdivision (a) and inserts the following:

*(b) If the board does not receive the information requested pursuant to paragraph (2) of subdivision (a) within 10 business days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without the information.*

*(c) Nothing in this section shall impede the board's ability to seek and obtain an interim suspension order or other emergency relief.*

This amendment clarifies the Board's authority to refer quality-of-care complaints about a LM to the field, even if it does not receive the information requested, pursuant to (a). This conforms to the same process provided for a P&S in BPC section 2220.08.

FISCAL: None for the Board

SUPPORT: None

OPPOSITION: None

POSITION: Recommendation: Support

ATTACHMENT: [SB 1440, Roth - Licensed Midwifery Practice Act of 1993: Complaints](#)  
Version: 02/18/22 – Introduced

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 1441  
AUTHOR: Roth  
BILL DATE: February 18, 2022, Introduced  
SUBJECT: Healing Arts: Nonconventional Treatment  
SPONSOR: None

DESCRIPTION OF CURRENT LEGISLATION

Requires the Medical Board of California (Board) and the Osteopathic Medical Board of California (OMBC) to annually update disciplinary policies and procedures related to emerging and innovative medical practices for licensed physicians and surgeons.

BACKGROUND

[Business and Professions Code \(BPC\) section 2501](#) required the Board and OMBC to develop disciplinary policies and procedures to reflect emerging and innovative medical practices for licensed physicians and surgeons (P&S). The Board adopted those procedures in April 2002.

ANALYSIS

SB 1441 requires the Board to update these procedures on an annual basis. Later this year, the language is expected to be substantially amended and the future version is expected to be unrelated to the current version.

FISCAL: Minor costs the Board.

SUPPORT: None

OPPOSITION: None

POSITION: Recommendation: Neutral

ATTACHMENT: [SB 1441, Roth - Healing Arts: Nonconventional Treatment](#)  
Version: 02/18/22 – Introduced

## MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: May 2, 2022  
ATTENTION: Members, Medical Board of California  
SUBJECT: Notice to Consumers – Discussion and Possible Action on Modified Text  
FROM: Kerrie Webb, Attorney III

### REQUESTED ACTION:

After review and consideration of the attached modified text for the proposed rulemaking on Notice to Consumers (Title 16 of the California Code of Regulations (CCR) sections 1355.4, 1378.5, 1379.4, and 1379.58) make a motion to:

1. Approve the modified text;
2. Direct staff to provide notice of a 15-day public comment period on the modified text;
3. If no substantive adverse comments are received during the 15-day public comment period, authorize staff to finalize the rulemaking file and submit it to the Office of Administrative Law, including the authority to adopt the modified text and make any technical or non-substantive changes without returning to the Board.

### BACKGROUND

At the July 26, 2018, Board meeting, the Board approved proposed regulatory text to amend 16 CCR sections 1355.4 and 1379.58 and to add sections 1378.5 and 1379.4 relating to the requirement for the Board's licensees and registrants to provide notice to their patients and clients regarding the Board's regulatory role and how to contact the Board to verify a license or file a complaint.

As required by the Administrative Procedure Act, Board staff released the proposed text for the 45-day public comment period on November 12, 2021, which ended on December 27, 2021. The California Medical Association and the California Hospital Association provided comments during the public comment period. Staff presented the comments and staff's recommended responses, along with modified text at the February 11, 2022 Board meeting.

Following the discussion and consideration of further public comments made by members of the public at the meeting, the Board requested additional modifications to the proposed language to reflect the following:

- 1) The Board will provide templates for the notice and acknowledgement of receipt and understanding on the Board's website in the 12 most common non-English languages spoken in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count;
- 2) Licensees will not be required to provide additional translations beyond what is provided by the Board; and

- 3) The templates for the posted notices shall include a QR code, which will take the scanner to the Board's webpage with the translated signs.

The proposed modified language is attached to this memo.

**STAFF RECOMMENDATION:**

Make and approve the motion indicated above under Requested Action in support of modifying the language or provide alternative instructions to staff.

DEPARTMENT OF CONSUMER AFFAIRS  
TITLE 16. MEDICAL BOARD OF CALIFORNIA

MODIFIED TEXT  
NOTICE TO CONSUMERS

LEGEND

Proposed changes to the current regulation language are shown by underline for added language and ~~strikeout~~ for deleted language.

Modified changes to the proposed regulation language are shown by double underline for added language and ~~double strikeout~~ for deleted language.

(1) Amend Section 1355.4 of Article 1, Chapter 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1355.4. Notice to Consumers.

(a) A medical doctor ~~licensee engaged in the practice of medicine~~ shall provide notice to each patient of the fact that the licensee is licensed and regulated by the board, the license can be checked and complaints against the licensee can be made through the board's website or by contacting the board. The notice shall include a quick response (QR) code that leads to the board's Notice to Consumer webpage, and shall contain the following statement and information:

NOTICE TO PATIENTS  
Medical doctors are licensed and regulated  
by the Medical Board of California.  
To check up on a license or  
to file a complaint go to  
(800) 633-2322  
www.mbc.ca.gov,  
email: licensecheck@mbc.ca.gov,  
or call (800) 633-2322.

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least ~~48~~38-point type in Arial font.

(2) Including the notice and an acknowledgement of receipt and understanding in a

written statement in a language understood by the patient's or patient representative's primary language, signed and dated by the patient or the patient's representative and retained in that patient's medical records, stating the patient understands the physician is licensed and regulated by the board. The notice and acknowledgement of receipt and understanding may be provided and maintained in an electronic format.

(3) Including the notice in a language understood by the patient's or patient representative's primary language in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

(c) If the licensee chooses to post a sign to comply with this section, and the sign is not posted in a language understood by the patient or patient representative, the licensee shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section, if the notice and templates for acknowledgement of receipt and understanding are provided by the board pursuant to subdivision (d) of this section in a language understood by the patient or patient representative, if the sign is not posted in the patient's or patient representative's primary language.

(d) Templates for the notice and acknowledgement of receipt and understanding shall be provided on the Medical Board of California website in the 12 most common non-English languages that are spoken in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count.

(e) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section if the hospital, clinic, or other practice location where the licensee is practicing posts the notice on its premises in an area visible to patients consistent with the requirements of this section.

Note: Authority cited: Sections 2018 and 2026, Business and Professions Code.  
Reference: Sections 138 and 2026, Business and Professions Code.

**(2) Add Section 1378.5 to Article 3, Chapter 3, Division 13, of Title 16 of the California Code of Regulations to read as follows:**

§ 1378.5. Notice to Consumers.

(a) A research psychoanalyst registrant shall provide notice to each patient of the fact that the registrant is registered and regulated by the board, the registration can be checked and complaints against the registrant can be made through the board's website or by contacting the board. The notice shall include a quick response (QR) code that leads to the board's Notice to Consumer webpage, and shall contain the following statement and information:

NOTICE TO PATIENTS

Research psychoanalysts are registered and regulated  
by the Medical Board of California.

To check up on a registration or  
to file a complaint go to  
[www.mbc.ca.gov](http://www.mbc.ca.gov),  
email: [licensecheck@mbc.ca.gov](mailto:licensecheck@mbc.ca.gov),  
or call (800) 633-2322.

(b) The notice required by this section shall be provided by one of the following  
methods:

(1) Prominently posting the notice in an area visible to patients on the premises where  
the registrant provides services as a research psychoanalyst, in which case the notice  
shall be in at least 38-point type in Arial font.

(2) Including the notice and an acknowledgement of receipt and understanding in a  
written statement in a language understood by the patient's or patient representative's  
primary language, signed and dated by the patient or the patient representative and  
retained in that patient's medical records. The notice and acknowledgement of receipt  
and understanding may be provided and maintained in an electronic format.

(3) Including the notice in a language understood by the patient's or patient  
representative's primary language in a statement on letterhead, patient instructions, or  
other document given to a patient or the patient representative, where the notice is  
placed immediately above the signature line for the patient in at least 14-point type.

(c) If the registrant chooses to post a sign to comply with this section, ~~and the sign is not  
posted in a language understood by the patient or patient representative, the registrant  
shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section,  
if the notice and templates for acknowledgement of receipt and understanding are  
provided by the board pursuant to subdivision (d) of this section in a language  
understood by the patient or patient representative.~~ ~~if the sign is not posted in the  
patient's or patient representative's primary language.~~

(d) Templates for the notice and acknowledgement of receipt and understanding shall  
be provided on the Medical Board of California website in the 12 most common non-  
English languages that are spoken in California per the California Census 2020  
Language and Communication Access plan prepared by California Complete Count.

(e) Notwithstanding subdivision (c), a registrant shall be deemed to be in compliance  
with this section if the hospital, clinic, or other practice location where the registrant is  
practicing posts the notice on its premises in an area visible to patients consistent with  
the requirements of this section.

Note: Authority cited: Sections 2018 and 2026, Business and Professions Code.  
Reference: Sections 138, and 2026, Business and Professions Code.

**(3) Add Section 1379.4 to Article 1, Chapter 4, Division 13, of Title 16 of the California Code of Regulations to read as follows:**

§ 1379.4. Notice to Consumers.

(a) A licensed midwife shall provide notice to each client of the fact that the licensee is licensed and regulated by the board, the license can be checked and complaints against the licensee can be made through the board's website or by contacting the board. The notice shall include a quick response (QR) code that leads to the board's Notice to Consumer webpage, and shall contain the following statement and information:

NOTICE TO CLIENTS  
Licensed midwives are licensed and  
regulated by the  
Medical Board of California.  
To check up on a license or  
to file a complaint go to  
[www.mbc.ca.gov](http://www.mbc.ca.gov),  
email: [licensecheck@mbc.ca.gov](mailto:licensecheck@mbc.ca.gov),  
or call (800) 633-2322.

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to clients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least 38-point type in Arial font.

(2) Including the notice and an acknowledgement of receipt and understanding in a written statement in a language understood by the client's or client representative's ~~primary language~~, signed and dated by the client or the client representative and retained in that client's medical records. The notice and acknowledgement of receipt and understanding may be provided and maintained in an electronic format.

(3) Including the notice in a language understood by the client's or client representative's ~~primary language~~ in a statement on letterhead, client instructions, or other document given to a client or the client representative, where the notice is placed immediately above the signature line for the client in at least 14-point type.

(c) If the licensee chooses to post a sign to comply with this section, and the sign is not

posted in a language understood by the client or client representative, the licensee shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section, if the notice and templates for acknowledgement of receipt and understanding are provided by the board pursuant to subdivision (d) of this section in a language understood by the client or client representative, if the sign is not posted in the client's or client representative's primary language.

(d) Templates for the notice and acknowledgement of receipt and understanding shall be provided on the Medical Board of California website in the 12 most common non-English languages that are spoken in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count.

(e) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section if the hospital, clinic, or other practice location where the licensee is practicing posts the notice on its premises in an area visible to clients consistent with the requirements of this section.

Note: Authority cited: Sections 2018 and 2026, Business and Professions Code.  
Reference: Sections 138, 2026, and 2508, Business and Professions Code.

**(4) Amend Section 1379.58 of Article 4, Chapter 4.3, Division 13, of Title 16 of the California Code of Regulations to read as follows:**

§ 1379.58. Notice to Consumers.

(a) A polysomnography registrant shall provide notice to each patient of the fact that the registrant ~~person~~ is registered and regulated by the board, the registration can be checked and complaints against the registrant can be made through the board's website or by contacting the board. The notice shall include a quick response (QR) code that leads to the board's Notice to Consumer webpage, and shall contain the following statement and information:

NOTICE TO PATIENTS-CONSUMERS  
Medical doctors and polysomnographic  
technologists, technicians, and trainees  
are licensed, registered, and regulated by  
the Medical Board of California.  
To check up on a license or registration or  
to file a complaint go to  
(800) 633-2322  
www.mbc.ca.gov,  
email: licensecheck@mbc.ca.gov,  
or call (800) 633-2322.

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the registrant provides the services for which registration is required, in which case the notice shall be in at least ~~48~~38-point type in Arial font.

(2) Including the notice and an acknowledgement of receipt and understanding in a written statement in a language understood by the patient's or patient representative's primary language, signed and dated by the patient or the patient's representative and retained in that patient's medical records, ~~stating the patient understands the polysomnographic registrant is registered and regulated by the board. The notice and acknowledgement of receipt and understanding may be provided and maintained in an electronic format.~~

(3) Including the notice in a language understood by the patient's or patient representative's primary language, in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

(c) If the registrant chooses to post a sign to comply with this section, and the sign is not posted in a language understood by the patient or patient representative, the registrant shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section, if the notice and templates for acknowledgement of receipt and understanding are provided by the board pursuant to subdivision (d) of this section in a language understood by the patient or patient representative, if the sign is not posted in the patient's or patient representative's primary language.

(d) Templates for the notice and acknowledgement of receipt and understanding shall be provided on the Medical Board of California website in the 12 most common non-English languages that are spoken in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count.

(e) Notwithstanding subdivision (c), a registrant shall be deemed to be in compliance with this section if the hospital, clinic, or other practice location where the registrant is practicing posts the notice on its premises in an area visible to patients consistent with the requirements of this section.

Note: Authority cited: Sections ~~138~~ and 2018 and 2026, Business and Professions Code; Reference: Sections 138 and 2026, Business and Professions Code.

**MBC TRACKER II BILLS****5/10/2022**

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 32	Aguiar-Curry	Telehealth	Sen. Health	05/24/21
AB 35	Reyes	Civil Damages: Medical Malpractice	Sen. Appropriations	04/27/22
AB 225	Gray	Department of Consumer Affairs: Boards: Veterans: Military Spouses	Sen. BP&ED	06/28/21
AB 305	Maienschein	Veteran services: Notice	Senate Floor	08/26/21
AB 343	Fong	California Public Records Act Ombudsperson	Sen. Judiciary	05/24/21
AB 581	Irwin	Cybersecurity	Senate G.O.	01/24/22
AB 646	Low	Department of Consumer Affairs: Boards: Expunged Convictions	Sen. BP&ED	01/24/22
AB 657	Cooper	State Civil Service System: Personal Services Contracts: Pros	Senate G.O.	06/15/21
AB 835	Nazarian	Hospital Emergency Departments: HIV Testing	Sen. Appropriation	07/12/21
AB 975	Rivas	Political Reform Act of 1974: Statement of Economic Interests & Gifts	Sen. Elections Cmte.	05/18/21
AB 1120	Irwin	Clinical Laboratories: Blood Withdrawal	Sen. BP&ED	01/03/22
AB 1306	Arambula	Health Professions Careers Opportunity Program	Sen. Appropriations	06/16/21
AB 1308	Ting	Arrest and Conviction Record Relief	Sen. Public Safety	
AB 1328	Irwin	Clinical Laboratory Technology and Pharmacists	Sen. Appropriations	07/14/21
AB 1400	Kalra	Guaranteed Health Care for All	Assembly Floor	01/24/22
AB 1429	Holden	State Agency Records: Mgmt. Coord. Duties: Personnel Training	Sen. Appropriations	06/29/21
AB 1436	Chau	Information Privacy: Digital Health Feedback Systems	Sen. Appropriations	07/16/21
AB 1604	Holden	The Upward Mobility Act of 2022	Assm. Approps	03/07/22
AB 1704	Chen	Leg-Podiatric Radiography Permit: Podiatric Medical Board of Ca.	Assm. Approps	04/18/22
AB 1706	Bonta	Cannabis Crimes: Resentencing	Assm. Approps	03/10/22
AB 1711	Seyarto	Privacy: Breach	Assembly Floor	04/21/22
AB 1715	Muratsuchi	Space Force	Senate Rules	
AB 1726	Aguiar-Curry	Address Confidentiality Program	Senate Judiciary	03/08/22
AB 1751	Daly	Workers' Compensation: COVID-19: Critical Workers	Assm. Approps	
AB 1797	Weber	Immunization Registry	Assm. Approps	05/02/22
AB 1809	Aguiar-Curry	Nursing Facility Resident Informed Consent Protection Act of 2022	Assm. Approps	03/30/22

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<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 1880	Arambula	Prior Authorization and Step Therapy	Assm. Approps	04/19/22
AB 1896	Quirk	Gamete Banks	Assm. Approps	04/21/22
AB 1914	Davies	Resource Family Approval: Training	Sen. Human Services	
AB 1918	Petrie-Norris	California Reproductive Health Service Corps	Assm. Approps	04/20/22
AB 1924	Gipson	Criminal Law: Certificate of Rehabilitation	Assm. Approps	03/17/22
AB 1944	Lee	Local Government: Open and Public Meetings	Assembly Floor	04/18/22
AB 1996	Cooley	State Government: Administrative Regulations: Review	Assm. Approps	
AB 2080	Wood	Health Care Consolidation and Contracting Fairness Act of 2022	Assm. Approps	05/02/22
AB 2085	Holden	Crimes: Mandated Reporters	Assembly Floor	04/18/22
AB 2087	Petrie-Norris	Prescription Drugs	Assm. Approps	04/20/22
AB 2089	Bauer-Kahan	Privacy: Mental Health Applications Information	Assm. Approps	04/21/22
AB 2091	Bonta	Disclosure of Information: Reproductive Health	Assm. Approps	04/06/22
AB 2105	Smith	Contractors: Initial License Fee Reduction: Veterans	Senate Rules	
AB 2107	Flora	Clinical Laboratory Testing	Assembly Floor	04/06/22
AB 2134	Weber	Reproductive Health Care	Assm. Approps	04/28/22
AB 2169	Gipson	Criminal Procedure	Assm. Approps	03/17/22
AB 2176	Wood	Live Birth Registration	Sen. Health	
AB 2199	Wicks	Birthing Justice for California Families Pilot Project	Assm. Approps	03/21/22
AB 2274	Rubio	Mandated Reporters: Statute of Limitations	Assembly Floor	03/31/22
AB 2288	Choi	Advance Health Care Directives: Mental Health Treatment	Senate Rules	03/17/22
AB 2338	Gipson	Health Care Decisions: Decisionmakers and Surrogates	Assembly Floor	04/28/22
AB 2365	Patterson	Fentanyl Program Grants	Assm. Approps	
AB 2370	Levine	Public Records: State Agency Retention	Assm. Approps	03/23/22
AB 2409	Davies	Parole: Victims' Rights	Assm. Approps	03/17/22
AB 2436	Bauer-Kahan	Death Certificates: Content	Assm. Approps	03/31/22
AB 2449	Rubio	Open Meetings: Local Agencies: Teleconferences	Assembly Floor	

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<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 2495	Patterson	The Parent and Child Relationship	Senate Rules	
AB 2522	Gray	Public Health Workforce Loan Repayment Program	Assm. Approps	04/20/22
AB 2529	Davies	Health Care: Workforce Training Programs	Assm. Approps	04/18/22
AB 2574	Salas	Optometry	Senate Rules	
AB 2586	Garcia	Reproductive and Sexual Health Inequities	Assm. Approps	04/21/22
AB 2636	Berman	Refugees, Asylees, and Special Immigrant Visa Holders	Assm. Approps	03/24/22
AB 2647	Levine	Local Government: Open Meetings	Assembly Floor	04/19/22
AB 2671	Cmte. on B&P	Occupational Therapy	Assm. Approps	04/27/22
AB 2677	Gabriel	Information Practices Act of 1977	Assm. Approps	04/21/22
AB 2684	Cmte. on B&P	Nursing	Assm. Approps	04/27/22
AB 2685	Cmte. on B&P	Naturopathic Doctors Act: Naturopathic Medicine Cmte.	Assembly Floor	
AB 2686	Cmte. on B&P	Speech-Language Pathologists, Audiologists, and Hearing Aid Disp.	Assm. Approps	04/27/22
AB 2687	Cmte. on B&P	California Massage Therapy Council	Assembly Floor	04/21/22
AB 2754	Bauer-Kahan	Psychology: Supervision	Assm. Approps	04/27/22
SB 40	Hurtado	Health Care Workforce Development: Ca Medicine Scholars Program	Assm. Approps	06/28/21
SB 349	Umberg	California Ethical Treatment for Persons w/Substance Abuse Act	Chaptered	02/02/22
SB 402	Hurtado	Multipayer Payment Reform Collaborative	Assm. Approps	06/14/21
SB 422	Pan	Personal Services Contracts: State Employees: Phys. & Pro Registry	Assembly Floor	
SB 441	Hurtado	Health Care Workforce Training Programs: Geriatric Medicine	Assm. Approps	03/22/21
SB 460	Pan	Long-term Health Facilities: Patient Representatives	Senate Floor	03/16/21
SB 492	Hurtado	Maternal Health	Senate Floor	04/19/21
SB 519	Wiener	Controlled Substances: Hallucinogenic Substances	Assm. Approps	08/16/21
SB 543	Limon	State Agencies: Nonprofit Liaison	Assm. Accountability	05/20/21
SB 652	Bates	Dentistry: Use of Sedation: Training	Assm. B&P	05/11/21
SB 731	Durazo	Criminal Records: Relief	Assembly Floor	09/02/21
SB 866	Wiener	Minors: Vaccine Consent	Senate Floor	03/09/22
SB 871	Pan	Public Health: Immunizations	Senate Health	

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<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
SB 872	Dodd	Pharmacies: Mobile Units	Assm. Approps	
SB 937	Ochoa Bogh	Subpoenas: Business Records	Senate Floor	
SB 962	Jones	Healing Arts: Clinical Lab Technology	Assm. Approps	04/05/22
SB 964	Wiener	Behavioral Health	Sen. Approps	04/18/22
SB 979	Dodd	Health Emergencies	Sen. Approps	05/02/22
SB 988	Hueso	Compassionate Access to Medical Cannabis Act	Senate Floor	
SB 993	Skinner	Victimes and Persons Erroneously Convicted	Sen. Approps	04/19/22
SB 999	Cortese	Health Coverage: Mental Health and Substance Use Disorders	Sen. Approps	05/03/22
SB 1003	Eggman	Trauma-Informed Care Training Program	Sen. Approps	03/08/22
SB 1018	Pan	Platform Accountability and Transparency Act	Sen. Approps	05/02/22
SB 1055	Kamlager	Child Support Enforcement: License Suspension	Sen. Approps	04/07/22
SB 1142	Caballero	Abortion Services	Sen. Approps	04/21/22
SB 1165	Bates	Substance Abuse and Mental Health Services	Assm. Health	
SB 1171	Caballero	Hearsay Evidence: Exceptions: Medical Diagnosis or Treatment	Senate Floor	04/28/22
SB 1172	Pan	California Privacy Rights Act of 2020	Sen. Approps	
SB 1178	Bradford	Criminal Procedure: Sentencing	Sen. Approps	
SB 1184	Cortese	Confidentiality of Medical Information Act	Senate Floor	05/05/22
SB 1189	Wieckowski	Biometric Information	Sen. Approps	04/07/22
SB 1199	Roth	UC Riverside, School of Medicine	Sen. Approps	03/15/22
AB 1229	McGuire	Mental Health Workforce Grant Program	Sen. Approps	04/28/22
SB 1231	Caballero	California Standard Diagnostic for Valley Fever	Sen. Approps	04/18/22
SB 1237	Newman	Licenses: Military Service	Sen. Approps	03/30/22
SB 1267	Pan	Clinical Laboratories	Sen. Approps	
SB 1346	Becker	Surplus Medication Collection and Distribution	Senate Floor	03/24/22
SB 1436	Roth	Respiratory Therapy	Sen. Approps	04/19/22
SB 1438	Roth	Physical Therapy Board of California	Sen. Approps	04/19/22
SB 1443	Roth	The Department of Consumer Affairs	Sen. Approps	