

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 815  
AUTHOR: Roth  
BILL DATE: May 8, 2023, Amended  
SUBJECT: Healing Arts  
SPONSOR: None

DESCRIPTION OF CURRENT LEGISLATION

The is the sunset bill for the Medical Board of California (Board). Includes various statutory changes requested by the Board, most notably, physician fee increases and the establishment of a complainant liaison unit.

BACKGROUND

Sunset review is the Legislature's regular process to review the operations, budget, and other laws related to the boards and bureaus within the Department of Consumer Affairs (DCA). To extend the authority to appoint the Members of the Board and the Board's Executive Director, the Legislature and Governor must enact a bill this year. The current sunset date for the Board is January 1, 2024.

In December 2022, the Board approved its [Sunset Review Report](#), which contained various statutory requests for the Legislature to consider enacting into law, which are discussed in priority order in Section 12, New Issues.

ANALYSIS

The bill provides for the following:

1. Extends the Board's sunset date by four years, to January 1, 2028.
2. Adds two public members to the Board to create a public-member majority.
3. Requires creation of a complainant liaison unit, with specified duties.
4. States that a postgraduate training license (PTL) shall be valid for a 36-month period after issuance.
5. Requires, for all quality-of-care complaints, that the complainant, patient, or patient representative be interviewed before a case is referred for a field investigation.
6. Tolls the statute of limitations when seeking to enforce a subpoena for medical records against a licensee.
7. Requires pharmacy records to be provided to the Board within three days of a Board request.
8. States that for certain felony convictions, the Board does not require an expert witness to prove the relationship between that conviction and the practice of medicine.
9. States that the following actions constitute unprofessional conduct:

- a. Not sitting for an investigational interview within 30 days after notification by the Board.
  - b. Any action by the licensee, or someone acting on their behalf, intended to cause their patient or the patient's representative to rescind their consent to release medical records.
  - c. Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.
10. Requires physician to maintain patient records for at least seven years after the last date of service to their patient.
  11. Increases wait times for those petitioning the Board for penalty relief (i.e., modify probation terms or license reinstatement); automatic denial of a petition to modify/terminate probation if the Board files a petition to revoke probation.
  12. Authorizes the Board to establish a fee to be paid by a petitioner seeking license reinstatement or modification of their probation.
  13. Requires the Board to provide a statement from a complainant to the Board's disciplinary panels, when relevant.
  14. Requires expert witness reports to be exchanged 90 days prior to a hearing before an administrative law judge (ALJ).
  15. Established a bifurcated burden of proof related to enforcement and certain initial licensure decisions.
  16. Authorizes the Board to distribute physician renewal applications electronically and restricted ability to ask certain questions related to physician disorders on those applications.
  17. Increases the physician initial and renewal license fees to \$1,350.
  18. Eliminates the language that limits the Board's reserves to four months' operating expenses.
  19. Transfers the regulation of research psychoanalysts to the Board of Psychology.
  20. Includes various technical licensing and enforcement changes requested by the Board.

### **Staff Comments on the Current Language**

As currently drafted, SB 815 reflects various Board requests and priorities from the 2022 Sunset Report, including the highest Board priorities: the requested fee increase, direction to establish a complainant liaison unit, and a four-year sunset extension.

Based upon the numbered items above, staff offer the following comments and suggested changes for the Board to consider:

#### No. 2 – Public Member Majority

Changing the composition of the Board to a public-member majority is a priority for the Board. However, the Board's requested approach is contained with [AB 2060 of 2022](#), which was sponsored by the Board. Staff recommend seeking to change the language to conform with the Board's approved language which would keep the overall number of

members the same and update the composition of the Board's disciplinary panels. Adding two additional members will increase the cost to the Board for travel and per diem, whereas the Board's sponsored language was cost neutral.

#### No. 4 – Reinstating a 36-month Postgraduate Training License

The bill includes the language requested by the Board so that a PTL is valid for a 36-month period after issuance. To provide the same benefits to current PTL holders, staff suggest making these provisions retroactive. This would cause all expiration dates for current licensees to be automatically extended out to 36 months from the date their PTL was issued. The staff workload associated with this change is expected to be minor and absorbable.

#### No. 5 – Interviews for Quality-of-Care Complaints

This proposal amends [Business and Professions Code \(BPC\) section 2220.08](#), which sets forth the requirements for a [Board medical consultant](#) to review a quality-of-care complaint to determine if it is appropriate for a field investigation. The language in SB 815 would require all such reviews to include an interview with the complainant, patient, or patient representative before it is referred for a field investigation. This would include cases that, under current law, would already be referred to the field.

In lieu of the approach currently in the bill, staff suggest instead that a separate statute be enacted to require the interview to occur before a case may be closed. Under this approach, cases that currently qualify for a field investigation (which is typically when an interview happens) would not be delayed. In addition, staff recommend defining "patient representative" as a spouse, domestic partner, another person responsible for the care of the patient, or next of kin.

Regardless of the approach, the Board would require additional staff resources to fulfill these responsibilities and it would lengthen the amount of time required to process and close complaints that do not meet the Board's burden of proof.

#### No. 7 – Submission of Pharmacy Records to the Board

This Board proposal requires pharmacies to respond to a Board request for records in the same timeframe as they would, under current law, pursuant to a request from the Board of Pharmacy. This proposal includes a drafting error, which should be clarified to state that these requests are related to a Board investigation and therefore are coming from the Board.

#### No. 8 – Expert Witnesses and Felony Convictions

This proposal is intended to relieve the Board of any need to use an expert witness to prove the relationship between certain types of felonies committed by a licensee and the practice of medicine. The proposal describes felonies related to certain topics (e.g.,

moral turpitude, dishonesty, corruption) that would qualify. As drafted, however, it presents certain technical challenges that should be addressed to meet its intended purpose. For example, it includes a specific appeal process for revoked licensees that is different than licensees revoked through the administrative hearing process. Also, the language does not prohibit a respondent licensee from bringing their own expert witnesses, which if that occurred, the Board may require its own expert witness.

Therefore, staff suggest the following amendments:

- Rather than use the descriptions of certain types of felonies, specify certain sections of the Penal Code (or in other codes, as appropriate) that would qualify. This will help ensure clarity for the Board and its licensees on which felony violations are relevant.
- Recast the rest of the related language in the bill with the following effects:
  - State that with respect to the specific felony violations, that if the licensee seeks an administrative hearing to contest being disciplined pursuant to their felony conviction that an ALJ shall not permit or give any weight to expert testimony regarding whether the conviction is substantially related to the practice of medicine and that the only purpose of the hearing is to determine the degree of discipline to be imposed.

No. 11 – Timeframes to File a Petition for Penalty Relief/License Reinstatement

This Board proposal requires those petitioning the Board for license reinstatement to wait at least five years to file their petition and authorizes the Board to deny a petition, without a hearing, filed within three years of the effective date of a prior decision on a petition for reinstatement, modification of penalty, or termination of probation. It also requires a petition for termination of their probation to wait at least two years or for half of their term to elapse, whichever is greater.

This proposal contains a drafting error and inadvertently includes a reference to the Board of Pharmacy, which should be removed.

No. 13 – Providing Complainant Statements to the Board’s Disciplinary Panels

This would amend [BPC section 2330](#) to require a statement from the complainant to be provided to, and considered by, a disciplinary panel of the Board, where relevant. This code section includes the Board of Podiatric Medicine, and possibly other licensing boards. The proposal does not make clear whether these statements would be subject to legal review through the administrative adjudication process that the Board is required to follow.

To avoid potential legal challenges (and the related delays and increased legal costs), staff suggest recasting this proposal in a new code section that would do the following:

- At the time that a complaint has been referred for a field investigation, require the Board to ask the relevant complainant, or their representative<sup>1</sup>, to provide a statement for the members of the Board to consider, relative to the harm they have experienced.
- Set a 60-day deadline for the complainant or representative to provide such a statement.
- Provide that the statement shall be subject to discovery by the respondent licensee and legal review, pursuant to existing law.
- Clarify, as necessary, that these provisions only apply to the Board.

This alternative approach is expected to reduce certain legal challenges but could lead to a decrease in the number of cases resolved through a stipulated settlement, if the respondent challenges the content of the statement. If so, the Board may face a higher volume of cases that are heard before an ALJ, which would increase legal costs and enforcement timeframes for those cases. Other Board costs associated with this alternative approach are expected to be minor and absorbable.

#### No. 15 – Burden of Proof Changes

The Board proposed to reduce the burden of proof for its disciplinary actions from clear and convincing evidence, per current case law, to preponderance of the evidence. The current burden of proof for a statement of issues for a licensing application or a Board petition to revoke probation is preponderance of the evidence.

The bill language proposes to bifurcate the Board's burden of proof and is intended to maintain the clear and convincing standard for matters related to license suspension or revocation and move to preponderance of the evidence for all other disciplinary outcomes.

Board staff are still evaluating how this proposal would work in practice, as the Board does not predetermine a desired disciplinary outcome at the outset of an investigation. Those decisions are made by the Board, following the development of a stipulated settlement or the matter has been adjudicated before an ALJ. The impact on Board operations, including costs, has not been determined.

In the meantime, Board staff suggest the following technical amendments:

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<sup>1</sup> To include spouse, domestic partner, another person responsible for the care of the patient, or next of kin.

- Remove references to a statement of issues or specify that the standard of proof to deny a license is preponderance of the evidence.
- Clarify that any statute changes do not impact the requirements related to proving that a licensee has violated the terms of their probation or specify that the standard of proof to revoke probation is preponderance of the evidence.

In general, moving to a preponderance of evidence standard is expected to decrease enforcement timeframes for some cases and increase the volume of cases that qualify for discipline.

#### No. 16 – Changes to Renewal Applications

This would eliminate the requirement that the Board issue paper-based renewal applications, which could allow the Board, in time, to further streamline its operations.

Further, it would change the Board's authority to ask questions about any disorder the physician may have that impairs their ability to practice medicine safely. The Board does not currently ask any such questions on its renewal application (only on initial applications); therefore, this would not change the Board's practices. No changes are suggested for this section.

#### No. 17 – Physician Fee Increases

This is the Board's proposal. Staff recommend the following technical amendments:

- Clarify that the proposed fee increases take effect on January 1, 2024.
- Remove obsolete language related to a 2012 financial audit of the Department of Finance.

#### No. 19 – Transfer of the Research Psychoanalyst Program to the Board of Psychology

This is a Board proposal. In discussion with the staff of the Board of Psychology, Board staff recommend a two-year delayed implementation to successfully complete the transfer of this program.

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

As currently drafted, the bill contains multiple proposals requested by the Board, including some of the Board's highest priorities. As discussed above, staff suggest changes to various sections of the bill which are necessary to help ensure the desired effect is appropriately implemented.

As discussed above, some proposals within the bill, including suggested staff amendments, may lead to certain cost increases and lengthen enforcement timeframes

in some situations. The increased costs, however, are expected to be absorbable considering the proposed fee increase.

Accordingly, staff recommend the Board adopt a Support, if Amended position on SB 815, and direct staff to pursue the suggested amendments identified above.

FISCAL: Minor one-time costs; approximately \$1.6 million in ongoing expenses for new staff to support workload related to the Complainant Liaison Unit, conducting complainant interviews regarding their quality-of-care complaints, and expenses related to adding two additional Board members.

The anticipated revenue increase is estimated to be between \$8.5M and \$17M in Fiscal Year 22-23 and \$34M in future years and is expected to accommodate any new potential enforcement-related cost increases.

SUPPORT: None identified.

OPPOSITION: California Medical Association (unless amended)

POSITION: Staff recommendation: Support, if Amended

ATTACHMENT: [SB 815, Roth – Healing Arts.](#)  
Version: 5/08/23 – Amended

Responses to 2023 Sunset Background Paper (see below)