

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 815
AUTHOR: Roth
BILL DATE: July 12, 2023, Amended
SUBJECT: Healing Arts
SPONSOR: None
POSITION: Support, if Amended

DESCRIPTION OF CURRENT LEGISLATION

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

RECENT AMENDMENTS

On July 12, 2023, SB 815 was amended, as follows:

- Includes language related to the Mexico Pilot Program (MPP) that authorizes the Board to issue an MPP license to those without an individual taxpayer identification number (ITIN) or social security number (SSN) but restricts practice until an SSN or ITIN has been issued. Also includes language authorizing the Board to extend the expiration date of an MPP license, as specified.
- Removes the language that would have added two public members, thereby creating a public member majority.
- States that all future issued, and current and active, postgraduate training licenses (PTL) shall be valid for 36 months.
- Eliminates the requirement for physician and surgeons (P&S) to show 24 months in the same training program prior to the initial renewal of their license.
- Recasts the requirement to conduct a complainant or patient representative interview prior to closing a quality-of-care complaint into a new code section.
- Recasts the requirement to provide a statement from the complainant or patient representative relative to the harm they experienced to the Board or relevant Board panel into a new section. Provides that the statement shall be provided to the respondent during the exchange of written expert witness reports.
- Clarifies that the burden of proof is preponderance of the evidence for any matter other than a violation that would result in license suspension or revocation.

- Aligns the sunset date for the Osteopathic Medical Board of California with the Board's sunset date.
- States that the research psychoanalyst (RP) program will transfer to the Board of Psychology on January 1, 2025.

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 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. Authorizes the issuance of an MPP license to those who lack an ITIN or SSN, as specified. Authorizes the Board to extend the expiration date of an MPP license, based on certain delays the licensee has faced, as specified.
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, including any active PTLs issued on or after January 1, 2020.
5. Requires, for all quality-of-care complaints, that the complainant, patient, or patient representative be interviewed before the complaint is closed, as specified.
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 a 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, as specified.
14. Requires expert witness reports to be exchanged 90 days prior to a hearing before an administrative law judge (ALJ), including any complainant statement received.
15. Establishes a bifurcated burden of proof related to enforcement and certain initial licensure decisions.
16. Authorizes the Board to distribute physician renewal applications electronically and restricts the ability to ask certain questions related to physician disorders on those applications.
17. Increases the physician initial and renewal license fees to \$1,289.
18. Eliminates the language that limits the Board's reserves to four months' operating expenses.
19. Transfers the regulation of the RP program to the Board of Psychology, effective January 1, 2025.
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: a substantial 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. 5 – Interviews for Quality-of-Care Complaints

This proposal establishes a new code section that requires an interview with a complainant, patient, or patient representative¹ to occur before a case may be closed. It states that a complaint may be closed, however, if the Board's request for an interview

¹ To include spouse, domestic partner, a person responsible for the care of the patient, or next of kin.

is not responded to within 30 days. It also makes clear that the Board may reopen the case, subject to the typical statute of limitations, if the complainant, patient, or patient representative provides additional information pertinent to the complaint. This portion of the language is consistent with the Board's request.

Unfortunately, the language does not delay the implementation so that the Board may recruit and train additional staff necessary to take on this new function. The Board has previously requested language to this effect be included in the bill.

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.

The Board previously requested 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. 13 – Providing Complainant Statements to the Board's Disciplinary Panels

This adds a new section stating that at the time that a complaint has been referred for a field investigation, the Board shall ask the relevant complainant, patient, or their

representative², to provide a statement for the members of the Board to consider, relative to the harm they have experienced. The language sets a 60-day deadline for the complainant or representative to provide such a statement and requires the statement to be provided to a respondent physician at the time that expert witness testimony is exchanged. It also states that these provisions do not apply to the Osteopathic Medical Board of California.

Board staff suggest one key technical amendment to the proposed change to BPC 2334 (a)(5):

A statement, if any, provided pursuant to Section 2220.2, ~~if relied upon by an expert.~~

These statements are not expected to be relied upon by the Board's expert witnesses, therefore this condition for their inclusion in expert witness documentation is not appropriate.

No. 15 – Burden of Proof Changes

The Board proposed to reduce the burden of proof for all disciplinary actions from clear and convincing evidence, per current case law, to 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.

The proposal in SB 815, unfortunately, is not consistent with the Board's intent, 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. It is unclear how the current language would be implemented within the Board's structure and processes.

Accordingly, staff recommend that the Board request that the Legislature to either adopt the preponderance standard for all disciplinary action or retain the existing clear and convincing standard.

² Ibid.

No. 17 – Physician Fee Increases

Staff recommend the following technical amendments:

- Remove obsolete language related to a 2012 financial audit of the Department of Finance.

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

These portions of the bill require technical changes to correct the fee amounts charged to RPs and clarify that the funds received by RP applicants and licensees will be deposited into the Psychology Fund.

New Licensing Proposals for Board Consideration

As part of the Board's ongoing efforts to improve efficiency and address challenges in consultation with stakeholders, Board staff suggest placing the additional law changes into statute:

Extended Expiration Date for PTLs

Application processing timeframes within the Board have significantly increased over the last couple of years. While staff have been working to address the situation through increased resources and additional process improvements, it may be beneficial to extend the expiration dates for PTLs who have recently, or soon will be, expiring that may not be able to remediate all application deficiencies before their PTL expires. Therefore, staff suggest including placing the following language into law into a new section of law:

Notwithstanding section 2064.5 subdivision (b), the expiration date for any postgraduate training license that expires between June 1, 2023, and December 31, 2023, shall be extended to March 31, 2024.

Upon its enactment, the above mentioned PTLs would be extended. This is not expected to negatively impact consumer protection, as the licensees must continue within their training program (i.e., practicing under supervision) for their PTL to remain valid. Enacting this change will help avoid any undue lapses in a PTL holder's ability to practice medicine while they continue to remediate their application deficiencies.

Align PTL Application Deadlines

Under current BPC section 2064.5, a medical school graduate must obtain their PTL within 180 days of enrollment within their training program.

There is a different deadline, however, for those who require a P&S license and who have 12 months of approved training in another state or Canada and are enrolled in a

California ACGME-accredited training program. Those applicants must receive their P&S within 90 days of starting their California program. Staff suggest aligning those two deadlines, as follows:

Amend BPC section 2065.

(g) An applicant for a physician's and surgeon's license who has received credit for 12 months of approved postgraduate training in another state or in Canada and who is accepted into an approved postgraduate training program in California shall obtain their physician's and surgeon's license within ~~90~~ **180** days after beginning that postgraduate training program or all privileges and exemptions under this section shall automatically cease.

Clarify Timing of the Deadline to Obtain a PTL

The Board receives questions from time to time about when a PTL applicant must receive their license. Board staff believe that a simple amendment to the law would help to clarify that the 180-day deadline starts to run once the individual actually begins (or starts) their training program (generally on July 1, for most individuals). This is consistent with the Board's interpretation of current law, but the change shown below will hopefully provide more clarity to applicant and training programs:

BPC section 2064.5

(a) Within 180 days after **beginning** ~~enrollment in~~ a board-approved postgraduate training program pursuant to Section 2065, medical school graduates shall obtain a physician's and surgeon's postgraduate training license. To be considered for a postgraduate training license, the applicant shall submit the application forms and primary source documents required by the board, shall successfully pass all required licensing examinations, shall pay a nonrefundable application and processing fee, and shall not have committed any act that would be grounds for denial.

Delete Obsolete Requirement Related to Training in "General Medicine"

BPC section 2096 currently states, in relevant part:

(b) The postgraduate training required by this section shall include at **least four months of general medicine** [emphasis added] and shall be obtained in a postgraduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME), the Royal College of Physicians and Surgeons of Canada (RCPSC), or the College of Family Physicians of Canada (CFPC).

Accordingly, the Board includes a question on its postgraduate training verification form completed by the training program asking whether the resident received credit for four months of general medicine as part of their training. This question, however, is specific to California, and inhibits our ability to leverage the Federation Credentials Verification Service (FCVS), which is a service offered by the Federation of State Medical Boards

(FSMB) that allows physicians to store their credentialing information and documents (including those that are primary sourced verified) to be shared with multiple state medical boards.

The Federation of State Medical Boards (FSMB) does not ask this question when verifying postgraduate training for physicians that utilize the FCVS, as this question is specific to California. Therefore, the Board is unable to accept primary source verified postgraduate training from the FCVS profile in lieu of the Board's training verification form.

This four-month general medicine requirement has been in law since the 1980s. In researching the original purpose of this law and its application to current postgraduate training programs, including feedback received from Board medical consultants and some California postgraduate training programs, this law is outdated and no longer relevant to current medical practice. When the requirement was created, most physicians would identify themselves as a "General Practitioner" after completing a medical internship, therefore, completing four months of general medicine ensured the minimal level of medical training to serve as a General Practitioner. At that time, most postgraduate training programs were inpatient medicine services, whereas currently, residency involves both inpatient and outpatient rotations. Additionally, when the Accreditation Council for Graduate Medical Education reduced the number of hours a resident could work to 80 hours a week, many programs eliminated general medicine rotations to ensure the residents had sufficient training in the chosen specialty.

There is no definition of general medicine in the Medical Practice Act, which has caused some confusion across programs, as what may be considered general medicine could vary across specialties. All board-approved postgraduate training programs must already meet accreditation standards set by the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the College of Family Physicians of Canada. For residents to obtain board certification in their specialty, training programs must also meet the American Board of Medical Specialties' training requirements. These standards ensure the program incorporates the type of training, whether classified as general medicine or not, that would be needed to successfully complete the program and obtain the knowledge and skills to practice medicine safely and independently in their chosen specialty.

Eliminating this requirement would allow the Board to remove this question from its training verification form and accept the FCVS primary source training verification in lieu of the Board's own form. This would eliminate one of the most common deficiencies for license applicants that have an FCVS profile without compromising public safety. Due to changes in medical education and training over the last few decades, this requirement is no longer needed to ensure the quality of board-approved postgraduate training programs.

Consideration of a Board Position

Board staff recommend the Board update its Support, if Amended position, as follows:

- Request language to delay the implementation of the complainant interview requirement until six months after the Board receives authority to hire new staff positions (No. 5).
- Request the technical amendment identified above related to complainant statements (No. 13).
- Request that the Legislature to either adopt the preponderance standard for all disciplinary action or retain the existing clear and convincing standard in current law (No. 15).
- Request technical changes to the language related to the transfer of the RP program to the Board of Psychology (No. 19).
- Maintain the following requests:
 - Update the expert witness and felony conviction language, as described above (No. 8).
 - Remove obsolete language related to a 2012 financial audit of the Department of Finance (No. 17).
- Request approval of the new licensing proposals discussed above, in either the Board's sunset bill or other appropriate legislation.

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 \$7.9M and \$15.8M in Fiscal Year 22-23 and \$31.9M in future years and, contingent upon an extended loan repayment term, is expected to accommodate any new potential enforcement-related cost increases.

SUPPORT: Osteopathic Medical Board (if amended)
Service Employees International Union – CIR (if amended)

OPPOSITION: California Medical Association (unless amended)

ATTACHMENT: [SB 815, Roth – Healing Arts.](#)
Version: 7/12/23 – Amended