

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 408
AUTHOR: Berman
BILL DATE: July 8, 2025, Amended
SUBJECT: Physician Health and Wellness Program
SPONSOR: Medical Board of California

DESCRIPTION OF CURRENT LEGISLATION

Authorizes the Medical Board of California (Board) to establish a Physician Health and Wellness Program (PHWP) for the early identification of, and appropriate interventions to support, treat, monitor, and rehabilitate applicants and licensees of the Board who have impairing or potentially impairing physical or mental health conditions, including substance use disorders, that may impact their ability to practice their profession in a reasonably safe, competent, and professional manner.

The proposed legislation provides the Board with new authority to prevent patient harm from occurring, without requiring the filing of a complaint. As with current law, those who participate in the PHWP pursuant to a probationary order from the Board will be subject to the [Uniform Standards for Substance-Abusing Licensees](#) (Uniform Standards).

AB 408 does not mandate participation in the PHWP. The Board, however, may include participation in the PHWP pursuant to a disciplinary order against a licensee.

AB 408 has not been amended since the previous Board meeting and is not expected to move forward this year.

BACKGROUND

During the November 21-22, 2024, meeting, the Board approved a motion that directed staff to work with the Legislature to find an author for its [PHWP proposal](#) and authorized the Board President and Board Vice President to work with staff, the Legislature, and other stakeholders in furtherance of the proposal.

[BPC sections 315-315.4](#) established in DCA the Substance Abuse Coordination Committee (SACC). The SACC is charged with formulating uniform and specific standards in various areas that a healing arts board shall use in dealing with substance-abusing licensees. The Board incorporated those [standards into its regulations in 2015](#). [BPC section 820](#) authorizes a healing arts licensing board within the Department of Consumer Affairs (DCA) to order a licensee to be examined by a physician or psychologist if it appears that the licensee may be unable to practice safely due to their mental or physical health condition. A report of such an examination shall be made available to the licensee and the approved licensing board, which may be used in a disciplinary proceeding.

ANALYSIS

AB 408 repeals the existing authority to establish a PHWP in BPC sections 2340 to 2340.8 and replaces it with the following sections that are summarized below:

BPC section 2340

- Establishes the vision for the program: Protecting consumers by addressing impairing, or potentially impairing, health conditions that may impact a current or future licensee's ability to practice in a reasonably safe, competent, and professional manner.
- Defines various terms, including, but not limited to:
 - Administering entity.
 - Applicants, prospective applicants, trainees, and students.
 - Mental/physical illness.
 - Substance use disorder.
 - Voluntary participant.

BPC section 2341

- A PHWP established by the Board shall do all the following:
 - Educate the public, licensees, applicants, prospective applicants, trainees, students, health facilities, medical groups, health care service plans, health insurers, and other relevant organizations on specified topics.
 - Establish relationships supportive of the program with professionals experienced in working with health care providers to provide education, evaluation, monitoring, or treatment services.
 - Receive and assess reports of suspected impairment from any source.
 - Intervene in cases of verified impairment or suspected impairment, as well as in cases where the individual has a condition that could lead to impairment if left untreated.
 - Upon reasonable cause, refer participants for evaluation, treatment, monitoring, or other appropriate services.
 - Provide consistent and regular monitoring, care management support, or other appropriate services for program participants.
 - Advocate on behalf of participants, with their consent, to the board to allow them to participate in the program as an alternative to disciplinary action, when appropriate.
 - Offer guidance on participants' fitness for duty with current or potential workplaces, when appropriate.
 - Perform other services as agreed between the program and the Board.

- Authorizes the Board or PHWP to choose whether to impose or follow the Uniform Standards upon voluntary participants.
 - Licensees with a probation order that includes the Uniform Standards must follow that order. The PHWP shall provide the evaluations, treatment, monitoring, and reports required by that order.

BPC section 2342

- If the Board establishes a PHWP, it shall contract with a 501(c)(3) non-profit organization, referred to as the administering entity, with leadership, expertise, and experience in impairment/rehabilitating healthcare providers. The section also streamlines the process to obtain a multi-year contract.
- The administering entity shall do the following:
 - Establish agreements with treatment resources.
 - Refer participants and others affiliated with the participants to appropriate services.
 - Makes services available to all Board licensees, applicants, prospective applicants, trainees, students (when sufficient resources are available), and those who self-refer.
 - Make prompt and diligent efforts to contact, evaluate, and enroll appropriate participants.
 - Provide immediate confidential reporting to the Board of withdrawals/terminations prior to program completion.
 - Provide regular communication with the Board.
 - Participate in Board meetings.
 - Submit reports with statistical information (as requested by the Board) and those pertaining to participants and other individuals, as required.
 - Comply with periodic quality and compliance evaluations by an independent third-party selected by the Board.

BPC section 2343

- A contract between the Board and an administering entity would be required to include procedures on the following topics:
 - Regular participation in Board meetings and regular reporting of statistical information to the Board.
 - Periodic joint reviews of referrals made to the PHWP.
 - Various reporting requirements to the Board, including, but not limited to, participants who commit a program violation, fail to cooperate with the program, or in the opinion of the PHWP are a danger to the public.
 - Informing participants of PHWP procedures, responsibilities, and consequences of noncompliance.

- Qualifications of those who serve participants.
- Prevention of conflicts of interest.
- Quality assurance and improvement principles.
- Maintenance and confidentiality of records.
- PHWP staff contacts.
- Data collection and analysis.
- Research process and methodologies.
- Education and outreach to stakeholders.
- Monitoring and accountability for licensees who practice across state lines.
- Notification, compliance, and cures to program deficiencies.
- Other relevant topics determined by the Board.

BPC section 2344

- The Board would be authorized to refer a licensee to the PHWP in lieu of discipline, with the consent of the licensee. If the licensee does not consent or does not successfully complete the program, the Board may proceed with appropriate disciplinary action, as authorized under current law.
 - Referring in lieu of discipline is not an option for those alleged to have harmed a patient or client or engaged in sexual misconduct.
- Participants shall be responsible for PHWP costs, but other payment from other sources is authorized.
- Services for participants shall be conducted by approved providers with expertise working with health care professionals with impairing or potentially impairing conditions.
- When the Board receives a required report that a deidentified voluntary participant has committed a program violation, the Board may:
 - Encourage continued participation in lieu of discipline, if appropriate.
 - Request the participant's identity, contact information, and a factual summary of events and findings from the PHWP, and begin an investigation and take appropriate disciplinary action.
 - Take other action consistent with the procedures established in the contract.
- Participants must authorize the release of information to the Board, as specified.
- The PHWP shall make the required reports to the Board in the following circumstances:

- A participant fails to comply with the program or the PHWP determines that they are unable to practice in a reasonably safe, competent, and professional manner.
- A licensee, applicant, or trainee (as defined) fails to enter the program and the PHWP determines they are unable to practice in a reasonably safe, competent, and professional manner.
- A licensee, applicant, or trainee (as defined) is required to notify the Board that they withdrew or were terminated from the program without completing the requirements within three days of that occurrence.
- Participants who leave the PHWP due to noncompletion may re-enroll with the agreement of the Board and the PHWP.
- The Board maintains the authority to discipline participants or to deny a licensure application to a participant who withdraws or is terminated from the program, including, but not limited to, ordering an evaluation of an illness that impacts their competency.

BPC section 2345

Provides that participants must execute a written agreement with the PHWP that includes, at least, all the following:

- A jointly agreed upon treatment plan, including conditions and procedures to monitor compliance. Compliance with a probationary order of the Board shall be included in the agreement, if relevant.
- Criteria for:
 - Compliance with the terms and conditions.
 - Program completion and termination.
 - When a report due to noncompliance will be made to the Board.
- An agreement to authorize communication between the PHWP, Board, or others, as appropriate.
- An acknowledgment of the following:
 - Withdrawal or termination prior to completion will be reported to the Board.
 - The PHWP is required to make reports to the Board when a participant withdraws or is terminated from the program, or is unable to practice in a reasonably safe, competent, and professional manner.
 - Participation in the PHWP is not a defense to a disciplinary or licensing action of the Board.

- The participant is responsible for PHWP costs, but they may be paid by other sources.

BPC section 2346

- Provides that program records are exempt from the California Public Records Act and not subject to discovery by subpoena or admissible as evidence except:
 - To defend the PHWP in certain civil or administrative actions related to current or former participants.
 - If records must be provided to the Board under the laws that establish the PHWP.
 - Records held by the Board may be used as evidence in a licensing or enforcement action.

BPC section 2347

- States that anyone who acts in good faith related to the PHWP is immune from civil liability, including:
 - The administering entity, the Board (and related members, employees, and agents) and advisory committees.
 - Those reporting an impaired person or provides information about someone to the PHWP/Board.
- This section does not require the Board to defend or indemnify someone in a civil action.
- The immunity does not apply in a case where it can be proven that someone made a report they knew was false, or with a reckless disregard of the truth or falsity of the report.

BPC section 2348

- This section authorizes the Board to establish one or more advisory committees to assist the Board in carrying out its duties related to the PHWP. The advisory committees shall operate under the direction of the Board's executive director or their designee, as follows:
 - Appointments are by majority vote of the Board for up to four years, with at least three members per committee.
 - A majority of those appointed shall be physician licensees of the Board with expertise in the evaluation, diagnosis, treatment, or management of health care professionals who are impaired due to substance use disorders, mental illness, or physical illness.

- Committee members must be unaffiliated with the PHWP (or its contractors) and all physician appointees shall have a current and active license from California.
- Provides for the following additional committee member criteria:
 - At least one member who is not licensed by the Board and has expertise in a Board-recognized field related to substance use disorders, mental illness, or physical illness.
 - At least one physician appointed shall specialize in diagnosis/treatment of substance use disorders in health care professionals.
- The section authorizes a committee to meet in closed session to review information related to PHWP participants, those being considered for entry into the program, or to hear reports from the PHWP about a participant. Further, the section states that committee members shall receive per diem and expense reimbursement.

BPC section 2349

- Advisory committees are authorized to have the following duties and responsibilities:
 - Evaluate licensees for possible referral to the PHWP in lieu of discipline and make related recommendations to the Board's executive director or their designee.
 - Review information about participants, including those reported to the Board, and make related recommendations to the Board's executive director or their designee.
 - Make recommendations to the Board's executive director or their designee whether a participant should be reported to the Board or that the PHWP should take other action(s).
 - Consider requests of potential participants or other matters requested by the Board.
 - Periodically hold open meetings to evaluate the PHWP, prepare reports to the Board, and consider PHWP changes or other matters requested by the Board.
- The section provides Board and committee members (including agents and contractors) immunity from civil damages due to acts or omissions while acting in good faith.

BPC section 2350

- This section continues the existing PHWP Program Account for the purpose of holding funds collected or allocated by the Board for the support of the PHWP. It

provides that those funds shall be available upon appropriation by the Legislature.

- The Board is authorized to seek and use grant funds and gifts of financial support from public or private sources and requires annual reporting to the Legislature (including upon request of the public) the amounts and source of funds received to support the program.

BPC section 2351

- If the Board establishes a PHWP, licensees would be required to make a report to the Board or PHWP if they, in their good faith judgment, believe another licensee may be impaired. PHWP staff and agents are exempt from this requirement in situations where the licensee in question does not pose a risk to patient safety.
- Prohibits disclosure of the reporter's name to the referred licensee, unless the reporter provides written permission, or disclosure is otherwise required by law.

BPC section 2352

- States that these laws are not applicable to the Osteopathic Medical Board of California or their licensees, applicants, prospective applicants, students, or trainees.

Claims Raised by Opponents

Throughout the legislative process, opponents of AB 408 have made various claims about the legislation and the PHWP, including, but not limited to:

Claim: AB 408, including the proposed exemption from the Uniform Standards for Substance Abusing Licensees, puts patient safety at risk.

Reality: This legislation reduces the existing patient safety risks and enhances patient safety by authorizing a program aligned with best practices that will prevent patient harm by prioritizing early intervention before a physician is unsafe to practice. Too often, the Board first learns that a physician is unsafe to practice when a complaint has been filed or the physician has been arrested.

Licensees disciplined by the Board would still be subject to the Uniform Standards. AB 408 does not require voluntary participants to follow the Uniform Standards because experts informed the Board that such a requirement will prevent physicians from joining a PHWP voluntarily and getting help early. Those who enter the program voluntarily will not be able to hide their issues; instead, they will receive treatment and be monitored. If a participant fails to cooperate with the PHWP, or is unable to practice safely, they will

be reported to the Board. The Board always retains authority to discipline program participants.

If the physician agrees to enter the program, the PHWP can act much more quickly than the Board to get the physician evaluated, obtain an agreement for the physician to stop practicing, if warranted, and to set up biological fluid testing, monitoring, and appropriate treatment.

Claim: AB 408 creates a secret program.

Reality: This legislation includes various reporting requirements and requires greater transparency than private treatment programs. Participants who withdraw, who are terminated prior to completion, who fail to cooperate with the PHWP, whose impairment is not substantially alleviated through treatment, or are unable to practice safely will be reported to the Board. As required by current law, non-voluntary participants are subject to the reporting requirements of the Uniform Standards.

The administering entity is required to provide regular communications and reports to the Board and participate in Board meetings. The administering entity will be subject to quality and compliance evaluations by an independent third party.

Claim: AB 408 violates the rights of physicians and forces them into a program that they don't want.

Reality: A physician who is contacted by the program is not required to participate and may choose whether to enter the program or not. The Board is already authorized to investigate a physician for possible impairment, and if their impairment can be proven by clear and convincing evidence, they may be ordered into treatment and monitoring. AB 408 does not change the due process rights available to physicians.

Claim: AB 408 recreates the Board's failed diversion program that allowed doctors under investigation because of substance abuse to avoid discipline by entering the program. These programs are not needed.

Reality: The prior program failed because it was underfunded and poorly managed. Under AB 408, the PHWP will be administered by a 501(c)(3) organization whose leadership has expertise treating health professionals, whereas the previous program was managed by board staff without the expertise required under this bill. Without this legislation, physicians experiencing an illness that could lead to impairment may have to seek help on their own from a private program that lacks the safeguards, expertise, and reporting requirements mandated in the PHWP.

The Board's only option now is to attempt to discipline physicians for their impairing condition, which can take years to complete at a five-to-six figure cost per case. Further, if the Board cannot obtain clear and convincing evidence that a violation has occurred, the Board cannot discipline a physician. During the 2022-2023 and 2023-2024 fiscal years, the Board had 145 and 141 licensees, respectively, on probation related to a substance-abuse problem. Experts advise that these numbers are well below the number of physicians expected to be experiencing an impairing, or potentially impairing, health condition.

PHWPs have a track record of success. See the June 24, 2025, letter from the Federation of State Physician Health Programs for additional information.

FISCAL: No costs are mandated by AB 408, as the bill authorizes, but does not require establishing a PHWP. The costs to fund the contract with the administering entity are undetermined.

SUPPORT: Amer. College of Obstetricians and Gynecologists, District IX/CA
 California Academy of Child and Adolescent Psychiatry
 California Dental Association
 California Medical Association
 California Orthopedic Association
 California Public Protection & Physician Health
 California Society of Addiction Medicine
 California Society of Anesthesiologists
 California Society of Dermatology and Dermatologic Surgery
 California Society of Pathologists
 California State Association of Psychiatrists
 Center for Professional Recovery
 Dr. Lorna Breen Heroes' Foundation.
 Dr. David Kan
 Drug Policy Alliance
 Federation of State Physician Health Programs
 SEIU California
 Physician Association of California
 Psychiatric Physician Alliance of California
 San Francisco Marin Medical Society
 Union of American Physicians and Dentists

OPPOSITION: Consumer Attorneys of California (unless amended)
 Consumer Protection Policy Center, USD Law School Law
 Consumer Watchdog
 Disability in Medicine Mutual Mentorship Program
 Disability Rights California

ATTACHMENT: [AB 408, Berman – Physician Health and Wellness Program.](#)
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