MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: November 13, 2026
ATTENTION: Members, Medical Board of California
SUBJECT: 2026 Sunset Report
STAFF CONTACT: Aaron Bone, Chief of Legislation and Public Affairs

REQUESTED ACTION

1) Approve the draft 2026 Sunset Report attached to this memo and authorize the staff to work with the President and Vice President to make any changes to the report, as directed by the Medical Board of California (Board), including any necessary technical or non-substantive edits prior to submitting to the Legislature, no later than January 5, 2027; and
2) Identify the Board's priorities for the legislative proposals contained in Section 10, New Issues.

BACKGROUND

The Board is scheduled to undergo sunset review by the Legislature in 2027, which involves an evaluation of the Board's activities since its prior sunset review in 2023. To facilitate the sunset review process, each board and bureau prepares a report that provides summaries of their programs, including various data regarding their activities since the prior sunset review. A key element of that report is Section 10, New Issues, which is that board or bureau's opportunity to request various statutory changes or provide the Legislature with updates on other topics.

After the Board's discussion on possible legislative proposals at the August 2026 Board meeting, the Board staff reviewed the legislative proposals submitted by Board Member Watkins and other proposals provided by a representative from Consumer Watchdog. Following that review, the Board staff recommend including in Section 10, New Issues, the proposal that would change the composition of the Board to a majority of public members. Below, the Board staff have provided comments on the proposals that were not included in the draft version of Section 10.

Most of the legislative proposals included in the draft report were discussed at the prior Board meeting, including the following additional proposals:

1) Change the Board's composition from a physician member majority to a public member majority, as proposed by AB 2060 (Quirk, 2022), which was Board-sponsored legislation.
2) Clarify that it is unprofessional conduct for a physician to be under the influence of substances when "on call" or "en route" to provide care.
3) Clarify that performing a wrong site surgery or the failure to remove a surgical object from a patient prior to completing a surgical procedure is unprofessional conduct.
4) Repeal an obsolete enforcement code section.

5) Establish a timeframe for an individual to file an extraordinary writ seeking review of a superior court's decision.
6) Include fee amounts that will support the solvency of the Licensed Midwife Fund and the newly proposed Licensed Midwifery Committee.

Further, the proposal to change the burden of proof has been removed so that the topic can be further considered and language informing the Legislature of the Board's ongoing consideration of the Interstate Medical Licensure Compact was added.

Board Staff Comments Regarding Proposals from Board Member Watkins

The Board staff offer the following comments related to the proposals provided by Mr. Watkins that are not included in the draft report.

"Warn Patients About Serious Investigations"

This proposal requires that a notice be placed on a physician's profile page whenever a complaint has been referred to the field for investigation and the allegations fall within a defined category of "serious risk" to patient safety. The proposal does not define what constitutes a serious risk.

Further, the proposal refers to a statute administered by the Contractors State License Board (CSLB) that requires the CSLB to make certain complaint information against a licensee public, if a complaint meets all of the following conditions:

- The complaint was referred for investigation after a determination by board enforcement staff that a probable violation has occurred.
- The complaint was reviewed by a supervisor.
- The complaint regards allegations that, if proven, would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution.

The Board refers complaints to the field for an investigation for the purpose of gathering additional evidence that may establish that a licensee violated the Medical Practice Act. Following the conclusion of a field investigation, the Board staff will consult with the Office of the Attorney General (OAG) to determine whether the evidence gathered may be sufficient to prove a violation of the Medical Practice Act. If there is agreement between the Board's executive director and the OAG, the OAG will draft an appropriate accusation which will be signed by the executive director and posted on the physician's profile page. Not all field investigations uncover the evidence sufficient to file an accusation.

"Make Disciplinary Guidelines Mean Something"

This proposal would make the disciplinary guidelines "presumptively binding," only allowing discipline and stipulated settlements to fall within the adopted range unless

"exceptional circumstances justify a departure." The proposal does not define what constitutes "exceptional circumstances."

The August 2023 Final Report of the Enforcement Monitor (appointed pursuant to Business and Professions Code (BPC) section 2220.01) included a review of 33 cases[1] to determine if the imposition of discipline for identified violations was consistent with the Board's disciplinary guidelines. In that review, the monitor determined:

- 42 percent of cases resulted in discipline imposed within the minimum/maximum range of discipline for the identified violation per the guidelines.

- 58 percent of cases resulted in discipline departing from the guidelines. However, such disciplines are deemed "justified departures" per the guidelines, which is explicitly allowed provided that the departures are identified and supported by the facts.

- In all 19 cases the monitor identified as justified departures, the supporting documentation sufficiently detailed the facts and circumstances within each case allowing for the recommended departure.

The Board's panels may reject a proposed decision or stipulated settlement if it believes that the proposed discipline is not in the best interest of consumer protection. In addition, the Board may choose to change the disciplinary guidelines through its rulemaking process. Relatedly, Board President Yip has appointed Board members Tsai and Torres to a task force that will lead the Board's consideration of updating the disciplinary guidelines.

Further, this proposal calls for public reporting of, among other things, the specific reasons for the departure from the Board's disciplinary guidelines. Doing so, however, could expose confidential investigation information and privileged communication between the Board and the OAG. Such disclosures could provide an advantage to the legal counsel for a respondent physician and undermine the Board's ability to impose appropriate discipline in the future.

"Prove that High-Risk Enforcement is Protecting Patients"

This proposal establishes "independent oversight and specified public reporting that is focused on high-risk enforcement" and states that certain data that the Board currently reports publicly should be validated periodically in an independent manner. The proposal does not specify how this independent oversight and data validation would occur.

[1] See pp. 32-36 for details.

Currently, the Board is subject to ongoing oversight by the Legislature (through Senate confirmation of the Governor's appointed Board members and Sunset Review), the Department of Consumer Affairs (DCA), and the Business and Consumer Services Agency. The recent Enforcement Monitor, who was appointed by and supervised by the DCA Director, was established via the Board's 2021 Sunset Review. During the monitor's review, Board staff cooperated with the monitor, providing all requested data, information, and files for their examination.

The monitor's reports were provided to the Legislature and the DCA, and discussed at public Board meetings. The monitor's August 2023 Final Report included various findings and recommendations. The Board's current progress addressing those matters is included in Agenda Item 6C, Executive Management Report, Enforcement Program Summary.

"Give Patients and Complainants a Meaningful Voice"

This proposal is intended to establish enforceable complainant rights. Further, it states that "[p]atients and families may possess evidence, history, witness information, and other facts essential to understanding what happened" and that when "a serious case is closed, there should be meaningful recourse outside the enforcement chain that made the original decision."

In addition, the proposal calls for various reforms, some of which were previously addressed in SB 815 (Chapter 294, Statutes of 2023), which established the Complainant Liaison Unit (CLU), the requirement to offer an interview to a complainant prior to closing a quality-of-care complaint (see BPC section 2220.1), and the opportunity for a complainant to provide a statement relative to the harm they experienced (see BPC section 2220.2). Further, the Board's recently released Complaint Tracking System is an online service that facilitates complainant visibility in the progress of their complaint and communication with the Board's enforcement staff.

The proposal does not describe the appeals process that the Board should follow; however, it references an appeals process (see Health and Safety Code section 1420) available to those who have filed complaints with the California Department of Public Health (CDPH) related to alleged violations of state law regarding care provided to residents of long-term health care facilities (e.g., skilled nursing facilities, intermediate care facilities, and congregate living health facilities). Like with the Board's CLU, the CDPH appeals process is handled internally by CDPH staff.

A person injured by a Board licensee has standing in the civil court to seek financial compensation from the licensee who provided inappropriate care. The Board's executive director (referred to as the "Complainant" in an accusation), not the person who filed the complaint with the Board, has standing to seek disciplinary action against a licensee.

Board Staff Responses to Consumer Watchdog Proposals

The Board staff offer the following comments related to the proposals provided by a representative of Consumer Watchdog.

Establish an Appeals Process for Complainants

This proposal would create an appeal process that may be used by complainants and consumers when their complaint has been closed. The proposal cites the existing physician appeal opportunities and notes the volume of complaints that are closed by the Board. The proposal indicates that it is intended to give complainants the opportunity to present additional information or defend their complaints.

As indicated above, the recently established CLU provides complainants with an opportunity to provide additional evidence related to their complaint. This proposal also notes that establishing a seven-year statute of limitations (SOL) will provide a consumer with enough time to manage complicated complaints and to file an appeal. The proposal calls for complainants to receive clear and thoughtful information outlining why their complaint was closed.

Pursuant to BPC section 800(c)(1), the Board's complaint and investigatory information is confidential. As discussed above, the public release of those records through a complainant appeal process could inadvertently undermine the integrity of the Board's investigatory and disciplinary efforts. Comments related to the SOL are provided below.

Expand the Statute of Limitations (SOL) for Minor Children, Including Babies Harmed Due to Pregnancy-Related Complications

This proposal states that the Board is not following the existing SOL for minor or unborn children and is closing cases inappropriately. The Board's SOL, or time limit, to complete its investigation into a matter and file an accusation is contained within BPC section 2230.5. For most Board complaints, the SOL is three years from the date of receipt of the complaint or seven years from the date of the alleged act or omission. For complaints that involve a minor, the seven-year limitation is tolled until the minor reaches the age of 18.

The Legislature added the statute of limitations[2] to help ensure that the Board investigates and resolves its disciplinary cases in a timely manner. In general, an SOL is beneficial because the quality and availability of evidence relevant to an investigation can diminish over time.

[2] See the Senate Floor Analysis for AB 2719 (Chapter 301, Statutes of 1998).

Post More Details of Hospital Disciplinary Actions from 805 Reports

This proposal states that the Board should include specific reasons for hospital disciplinary action from a report received by the Board pursuant to BPC section 805, such as a loss of hospital privileges, on a physician profile page and in a disciplinary order.

BPC section 2027(b)(7) currently requires the Board to post a summary of any final hospital disciplinary actions that resulted in the termination of or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason. If those privileges are restored, this requirement states that such information shall remain on their profile page for a 10-year period after the restoration. The Board is not prohibited from including information related to a BPC section 805 report in an accusation, when relevant.

Send Board Disciplinary Actions to Other States

This proposal would require the Board to send its orders to other states where a Board licensee also holds a license. The Board, however, already reports such information to the National Practitioners Data Bank (pursuant to federal requirements, including Title IV of the *Health Care Quality Improvement Act of 1986* (HCQIA) and Section 1921 of the *Social Security Act)* and the Federation of State Medical Boards. The Board regularly submits reports to these databases and receives reports from other states via those databases.

Require Physicians Disciplined a Second Time to Successfully Complete a Competency Examination

This proposal states that an order of probation against a physician that relates to patient harm or death shall require passage of a competency exam (if that physician was previously disciplined for patient harm, sexual misconduct, impairment, or fraud). If the licensee fails the exam, the Board shall issue a cease practice order until the licensee passes the exam.

The Board does not require a statutory change to enact this proposal and may choose to consider such a condition when evaluating a proposed stipulated settlement and may direct staff to update the Board's disciplinary guidelines accordingly.

Hold Enforcement and Outreach Committee Meetings During Quarterly Board Meetings

The proposal notes that the Board previously held separate committee meetings the day before a quarterly Board meeting. Prior Board leadership chose to consolidate discussions on matters related to those topics into the quarterly Board meeting agenda and appoint a task force of two Board members to address specific topics, as needed. The Board does not require a statutory change to enact this proposal.

First-Time Disciplinary Actions Must Comply with Minimum Disciplinary Guidelines; Second Disciplinary Actions Must Exceed the Minimum Disciplinary Guidelines

The current disciplinary guidelines indicate that they are not binding and that mitigating circumstances may be taken into account by an administrative law judge when drafting a proposed decision and by Board staff when submitting a proposed stipulated settlement to the Board panels. As indicated above, the Board may choose to make changes to its disciplinary guidelines through the rulemaking process and does not require a statutory change to enact this proposal.

RECOMMENDATION

Board staff recommend that the Board take the action requested under Requested Action.