

# MEDICAL BOARD OF CALIFORNIA

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*Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Business and Professions Code § 2000.1

**T**he Medical Board of California (MBC) is a consumer protection agency within the state Department of Consumer Affairs (DCA). The primary purpose of MBC is to protect consumers from incompetent, grossly negligent, unlicensed, impaired, or unethical practitioners by responding to complaints from the public and reports from health care facilities and other mandated reporters. MBC reviews the quality of medical practice carried out by physicians and surgeons and enforces the disciplinary, administrative, criminal, and civil provisions of the Medical Practice Act, Business and Professions Code section 2000 *et seq.* MBC also provides public record information about physicians to the public via its website and individual requests and educates healing arts licensees and the public on health quality issues. The Board's regulations are codified in Division 13, Title 16 of the California Code of Regulations (CCR).

MBC is responsible for ensuring that all physicians licensed in California have adequate medical education and training. In this regard, the Board issues regular and probationary licenses and certificates under its jurisdiction, administers a continuing medical education program, and administers physician and surgeon examinations to some license applicants. MBC also oversees

the regulation of licensed midwives; polysomnographic technologists, technicians, and trainees; research psychoanalysts; and medical assistants.

The fifteen-member Board consists of eight physicians and seven public members. MBC members are appointed by the Governor (who appoints all eight physicians and five public members), the Speaker of the Assembly (one public member), and the Senate Rules Committee (one public member). Members serve a four-year term and are eligible for reappointment to a second term. Several standing committees and ad hoc task forces assist the Board.

On March 3, 2019, DCA [announced](#) the Board’s appointment of William J. Prasifka as its new executive director. A native of California, Prasifka comes to the Board from the Medical Council of Ireland, where he has served as its chief executive officer for the past four years. Prasifka will officially start his position with the Board in June.

At this writing, the Board has three vacancies—one physician and two public members—which must be filled by Governor Gavin Newsom. Additionally, the Board is actively seeking a new deputy director.

## **HIGHLIGHTS**

### **Board Declines to Pursue Legislation that would Limit Licensed Midwives’ Scope of Practice after Significant Pressure from Midwife Community**

At its November 7, 2019 [meeting](#), the Board considered whether to pursue a legislative proposal that would amend section 2507 of the Business and Professions Code to, among other things, prohibit licensed midwives under MBC’s jurisdiction from attending home births if the mother had a prior cesarean delivery (commonly known as a “VBAC” (vaginal birth after cesarean)).

In presenting the item, staff explained that the proposal is the result of nearly six years of debate after [AB 1308 \(Bonilla\) \(Chapter 665, Statutes of 2013\)](#) became effective in January 2014. That bill generally eliminated the requirement for a physician to supervise a licensed midwife, but provided that if a potential patient failed to meet the standards for a “normal pregnancy or childbirth,” the licensed midwife must refer the patient to a physician. To implement the bill, the Board established a taskforce consisting of physicians, representatives from the California Association of Midwives, the California Association of Licensed Midwives, and the American College of Obstetricians and Gynecologists (ACOG), to develop regulations defining “normal birth” among other things. The taskforce held interested parties meetings to discuss the current status of regulations defining the pre-existing maternal disease or conditions likely to affect the pregnancy.

While the taskforce ultimately reached a consensus as to most issues, they disagreed as to whether to allow licensed midwives to attend home births for women with prior cesarean deliveries. Midwives argued that there is very low risk with VBAC performed at home, while physicians (ACOG and CMA) contended that, while rare, the complications that could arise are severe enough that a lack of immediate, full range of emergency hospital services could be dire. The taskforce members agreed the matter could not be entirely resolved through regulations because the changes would exceed the Board’s scope of authority. Accordingly, staff proposed the statutory change to resolve the issue at the Board’s November 7 meeting, presenting language that the Board had voted to approve at its April 2017 [meeting](#) [Agenda Item 22].

The meeting was overwhelmed by members of the public opposing this statutory proposal. 32 speakers and 11 callers gave public comment on this item, providing opinions, personal stories, and citing evidence, all of whom urged Board members to vote against narrowing licensed midwife

scope of practice. Many more were present in the audience with buttons and signs. After a lengthy discussion in which Board members weighed the risks of VBAC procedures and the possible consequences of prohibiting midwives from performing them at home, the motion to further pursue this legislative proposal failed, and the Board thus declined to move forward with this legislative proposal.

## **Board Votes to Pursue Legislation to Increase Licensing Fees**

At its January 30, 2020 [meeting](#) [Agenda item 7], the Board evaluated whether to increase licensing fees to bridge the growing gap between revenues and expenses, a looming concern the Board has discussed to no avail for several years. In November 2019, the Board engaged CPS HR Consulting to perform an analysis of MBC's projected fund depletion and to determine appropriate levels for 22 of its fees. The resulting [Fee Study](#) was provided to Board members the night before the meeting. The Report provided findings and recommendations that Board members and staff discussed for almost an hour before taking action. The Report showed that since the last physician and surgeon fee increase in January 2006, MBC has experienced significant increase in expenditures, citing the majority of costs as outside of MBC's control. Expenses included increased Attorney General costs, an increased need for AG and Division of Investigation services, union-negotiated salary or benefit increases, and one-time expenditures to implement new systems or provide supplementary pension payments. The result is structural imbalance of MBC's fund with eventual insolvency unless corrected. The Report concluded that since MBC is funded entirely by licensing and regulatory fees, curing the significant deficit between MBC's revenue stream and expenditures can only be achieved by raising its fees. The study examined each fee with the target of establishing and maintaining the current legal maximum reserve of four months

for the next five fiscal years. Without action, financial projections show insufficient funds for ongoing operations by the beginning of FY 2021–22.

To prevent insolvency and achieve a mandatory reserve as required by statute, the Report recommends that MBC seek statutory fee increases in each of their fee categories. The fees reviewed in the study include Physician and Surgeon, Special Faculty, Licensed Midwife, Polysomnographic Trainee/Technician/Technologist, Research Psychoanalyst, and Fictitious Name Permit fees. The recommended fees presented in [Table 13](#) (at page 25) reflect increases from 0% to 50%, with an overall increase of 44.9% when considering the volume of applications and renewals. For example, Physician/Surgeon Renewals currently cost \$783 every two years and would jump 47% to \$1,150, and Midwife Renewals would increase 50% from \$200 to \$300, while Special Faculty Permit Applications would stay constant at \$442.

During deliberation, Board members expressed many concerns about the findings and recommendations, with initial frustration at having only 12 hours to review the Report before making a decision. Board members complained that only one option was presented and expressed an interest in pursuing cost containment strategies in addition to revenue generation. One member was especially concerned that MBC spends the largest portion of its budget on investigations with no cost recovery scheme to offset the expenses. He lamented spending so much money and not even being able to maintain benchmark cycle times for investigations.

Despite these concerns, Board members acknowledged that 14 years had passed without a fee increase and insolvency was not an option. President Pines reiterated the need to make a decision “now,” but said in the next Board meeting, members could discuss the costs presumed outside MBC control and evaluate whether there were a few options the Board could explore for further action. In the end, the motion to approve the recommended fee level increase passed ten to

one, authorizing Board staff to seek legislation to make the necessary statutory changes to the law as soon as possible. At this writing, no legislation proposing the fee increase has been introduced.

## **State of California Waives Licensing Requirements for Out-of-State Medical Personnel to Aid in the Response to COVID-19 Outbreak**

On March 4, 2020, Governor Newsom issued an [Emergency Proclamation](#) in response to the COVID-19 outbreak. Concerned that the number of persons in California requiring medical care would soon exceed locally available resources, the Governor authorized the waiver of licensing and certification requirements for out-of-state medical personnel to provide services in California.

Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification.

On March 24, 2020, the State of California’s Emergency Medical Services Authority (EMS) published [policies and procedures](#) to implement the emergency proclamation of the Governor on authorization of out-of-state medical personnel. MBC posted the link to [EMS Guidance for COVID-19](#) on its website. Among the policy requirements, the EMS Authority will only accept requests for out-of-state medical personnel approval from a California medical facility, telehealth agency contracted with a California medical facility, or a staffing agency providing staffing to California medical facilities. This order will aid facilities who are unable to meet COVID-19 staffing needs with California certified and licensed healthcare professionals. Facilities must submit a written request to the EMS Authority with the out-of-state individual’s name, healthcare license information, state where the license/certification is held, and copies of the

individual's certification or license and photo identification. The facility must receive approval for such hires in advance.

The California EMS Authority shall review and make a written determination within two to four business days after receipt of a complete request. The duration of the approval shall continue until the termination of the State of Emergency or the end date on the temporary recognition form, whichever comes first. The medical facility will be responsible for monitoring the healthcare providers hired based on this approval and will notify the EMS Authority of any [unusual occurrence](#) with 24 hours of the event occurring.

The Federation of State Medical Boards (FSMB) issued a [statement](#) on March 13, 2020, supporting states in verifying licenses for physicians responding to COVID-19:

The FSMB stands ready to assist our member state medical boards and state health departments across the country in their efforts to quickly and accurately verify medical licenses to meet workforce needs without sacrificing patient safety. With numerous states declaring public health emergencies and temporarily waiving licensing requirements or creating additional pathways in response to COVID-19, it is essential that these entities have complete, accurate, and up-to-date information to verify licenses.

## **State of California Waives Licensing Requirements to Restore Inactive, Retired, or Cancelled Medical Licenses to Full, Active Status in Response to COVID-19 Outbreak**

On Monday, March 30, 2020, Governor Newsom issued [Executive Order N-39-20](#), giving the Director of DCA the authority to waive professional licensing requirements for the healing arts boards under DCA during the COVID-19 State of Emergency. [DCA Waiver DCA-20-02 Reinstatement of Licensure](#) allows licensees to temporarily restore an inactive or retired license

without having to pay any fees or complete, or demonstrate compliance with, any continuing education requirements for up to six months.

## **Governor’s Executive Order Expands Telehealth Services in Response to COVID-19**

On Friday, April 3, 2020, Governor Gavin Newsom signed [Executive Order N-43-20](#) expanding protections to medical providers as they amplify the use of video chats and similar applications to provide routine and non-emergency medical appointments in an effort to minimize patient exposure to COVID-19. The order relaxes certain state privacy and security laws for medical providers, so they can provide telehealth services without the risk of being penalized. This action is similar to the federal HHS Office for Civil Rights [waiver](#) issued on March 17, 2020 regarding federal privacy and security laws.

## **MAJOR PUBLICATIONS**

The following reports or studies have been conducted by or about MBC during this reporting period:

- [\*Analysis of California's Physician-Supervision Requirement for Certified Nurse Midwives\*](#), Legislative Analyst’s Office, March 11, 2020 (Pursuant to request from Legislature, analyzed the requirement of physician supervision for nurse midwives that was intended to improve the safety and quality of women’s health care; concludes no significant differences in the quality of care between states that do and do not have this requirement and it is unlikely to achieve this purpose; moreover, the requirement could limit access to nurse-midwife services, potentially women’s health care services overall, and raise women’s health care costs; recommends removing



the state’s physician-supervision requirement, while adding other safeguards to ensure safety and quality.)

- [Medical Education Analysis](#), Legislative Analyst’s Office, February 20, 2020 (Analysis of Governor’s proposals to augment funding and expand UC medical education at the UC Riverside School of Medicine and the UCSF Fresno branch campus to address regional physician shortages; recommends withholding action pending comprehensive UCSF Fresno expansion plan and an oversight hearing to review and discuss any further expansion.)

## **RULEMAKING**

- *Substantial Relationship and Rehabilitation Criteria; Implementation of AB 2138* (On December 6, 2019, Board [noticed](#) proposal to amend sections 1309, 1360, 1360.1, and 1360.2 and to repeal sections 1379.68, 1379.70, and 1379.72, Title 16 of the CCR to adopt “substantial relationship” criteria for determining whether applicants’ past crimes are relevant to work as a physician or for purposes of denying, suspending, or revoking a license; A [public hearing](#) was held January 22, 2020 and no public comments were received.) [[25:1 CRLR 47-48](#)]
- *Supervision Required for Physician Assistants* (On November 8, 2019, the Board approved withdrawal of the rulemaking action and published [Notice of Decision Not to Proceed](#).) [[25:1 CRLR 47-48](#)]

## **LEGISLATION**

- [SB 201 \(Wiener\)](#), as amended January 6, 2020, would add section 2295 to the Business and Professions Code. The bill would, in the absence of medical necessity and the subsequent informed consent of the parent(s) or guardian(s), forbid licensees from performing any treatment or intervention on the sex characteristics of an intersex minor without the informed

consent thereof. According to the author, this bill protects the dignity and autonomy of all people, including those born with variations in their physical sex characteristics. *[S. BP&ED]*

- [AB 1909 \(Gonzalez\)](#), as introduced January 8, 2020, would add section 726.5 to the Business and Professions Code to prohibit a healing arts licensee from performing an examination or test on a patient to determine whether the patient is a virgin. According to the author, there is no medical reason for this examination and “it’s time for California to ban this traumatizing, sexist, and unnecessary practice.” At its January 30, 2020, meeting, the Board voted unanimously to support this bill. *[A. B&P]*

- [SB 480 \(Archuleta\)](#), as amended January 14, 2020, would add and repeal section 2072 of the Business and Professions Code, to require the MBC to establish a Radiologist Assistant Advisory Committee for the purpose of identifying the appropriate training, qualifications, and scope of practice for individuals providing assistant to radiologists. At its January 30, 2020, meeting, the Board voted unanimously against this bill. *[S. Appr]*

- [AB 2478 \(Carrillo\)](#), as introduced February 19, 2020, would add section 2028 to the Business and Professions Code to require the MBC to conduct a study by January 1, 2022, on achieving specified goals relating to expanding the existing pool of international medical graduates. *[A. B&P]*

- [AB 2515 \(Nazarian\)](#), as introduced February 19, 2020, would amend section 2190.3 of the Business and Professions Code to require a general internist and family physician who has a patient population of which 10% are 50 years of age or older to complete at least 20% of all mandatory continuing education hours in a course related to geriatric medicine or the care of older patients. Existing law has a higher threshold before triggering the requirement for a physician—a patient population of which 25% are 65 years or older. *[A. B&P]*

- [SB 1278 \(Bradford\)](#), as introduced February 21, 2020, would amend section 2290.5 of the Business and Professions Code to specify that generally accepted standards of practice that apply to a health care provider under their license also apply while providing telehealth services. [*S. BP&ED*]

## LITIGATION

- *Mathews v. Becerra*, Case No. S240156 (Cal. Sup. Ct.). On December 26, 2019, the court [rejected](#) Attorney General Becerra’s bid to dismiss a lawsuit by therapists challenging a state law requiring them to report patients who admit they have downloaded and viewed child pornography. Plaintiffs complain the law deters people with sexual compulsions from seeking treatment and forces therapists to call the police on patients they do not believe pose a risk. Justice Goodwin H. Liu wrote for a 4-3 majority that overturned a 2nd District Court of Appeal decision dismissing the complaint on demurrer. Instead, he remanded the case to gather more evidence to determine the constitutionality of a 2014 statute, [AB 1775 \(Melendez\) \(Chapter 264, Statutes of 2014\)](#), that amended the Child Abuse and Neglect Reporting Act. The law expanded the definition of sexual exploitation under the reporting to include downloads, streams, and access through any electronic or digital media.