

# 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 June 15, 2020, Governor Gavin Newsom [appointed](#) Dr. Cinthia Tirado, M.D. as a physician member of the Board. Dr. Tirado is an associate clinical professor in the Department of Anesthesiology at the University of California, Davis Medical Center. On the same day, Governor Newsom reappointed licensee member Dr. Randy Hawkins, assistant professor at Charles R. Drew University of Medicine and Science and a physician and surgeon in private practice who has served on the Board since 2015, and public member Laurie Rose Lubiano, IP and product counsel for The Climate Corporation who has served on the Board since 2018.

On September, 30, 2020, Governor Gavin Newsom [appointed](#) Alejandra Campoverdi as public member of the Board. Campoverdi is the founder of the Well Woman Coalition, and host of the “Pod is a Woman” podcast. She holds a Master of Public Policy degree from Harvard University.

At its November 13, 2020 [meeting](#), the Board elected public member Kristina D. Lawson as President of the Board after public member Denise Pines’ term on the Board expired. Ms. Lawson, an attorney, has served on the Board since 2015. The Board also elected licensee member Dr. Howard R. Krauss as Vice President, and Dr. Hawkins as Secretary of the Board.

At this writing, the Board has two public member vacancies, one which must be filled by Governor Gavin Newsom and the other by the Speaker of the Assembly.

## **HIGHLIGHTS**

### **Board Endorses Legislation Allowing Pharmacists to Administer Potential COVID-19 Vaccines Without Federal-Level Approval**

At its August 13, 2020 [meeting](#), the Board, in anticipation of a potential COVID-19 vaccine becoming available to the general public, voted to support [AB 1710 \(Wood\) \(Chapter 123, Statutes of 2020\)](#) a bill that authorizes a licensed pharmacist to independently initiate and administer any COVID-19 vaccines approved or authorized by the federal Food and Drug Administration (FDA). The Pharmacy Law already authorizes licensed pharmacists in California, who have completed an immunization training program and are certified in basic life support, to independently initiate and administer routine vaccines as identified in the schedules issued by the federal Advisory Committee on Immunization Practices (ACIP), under the Centers for Disease Control.

AB 1710, as amended August 24, 2020, amends section 4052.8 of the Business and Professions Code to add future FDA-approved COVID-19 vaccinations to the pre-existing list of vaccines on the ACIP's routine immunization schedules, and authorizes pharmacists to administer any FDA-approved COVID-19 vaccine under the same circumstances as pharmacists administer other routine vaccines.

According to the California Pharmacist Association, the sponsor of the bill, AB 1710 is necessary because pharmacists would not be able to administer a COVID vaccine until it has been recommended by ACIP, a process that usually takes at least six months after FDA approval.

In its legislative [analysis](#) prior to the August quarterly meeting, MBC staff analyzed the then-current iteration of the bill as amended July 2, 2020. Staff recognized the immediate need for quick and widespread distribution of a COVID-19 vaccine once available, but also expressed concern about the balance between public health and any potential consumer risk from an expedited vaccine. Furthermore, during the quarterly meeting, Board member Laurie Rose Lubiano, echoing the legislative analysis prior, cautioned that under the original language of the bill, it would not only allow an authorized pharmacist to administer a COVID-19 vaccine, but rather “it would grant a pharmacist authority to independently initiate and administer any FDA-approved vaccine to persons aged three and older.” Ultimately, the Board voted to support AB 1710 if it was amended to narrow the scope of the bill to only COVID-19 related vaccines, and recognized that having trained pharmacists administer the vaccine would be the most efficient way to vaccinate the general population at large.

After the Board’s meeting, the legislature did amend the bill to narrow its scope per the Board’s suggestion. Governor Newsom signed AB 1710 on September 24, 2020 (Chapter 123, Statutes of 2020).

## **California Attorney General Issues Opinion Clarifying Term ‘Effective Date’ For Mandatory Reporting After Disciplinary Actions for Healthcare Professionals**

On April 17, 2020, at the request of MBC, the Office of the Attorney General of California (AG) published an [opinion](#) clarifying the time by which certain peer review bodies, such as hospitals, must file a report with a California healing arts licensing agency, including MBC, when they take certain actions against medical professionals. Specifically, the opinion clarified that

“effective date,” as it is used in section 805 of the Business and Professions Code, is defined as “the date on which the triggering decision becomes final, following the conclusion of any appeal by the licentiate to the peer review body, except where expressly provided otherwise.”

Section 805 applies to physicians, podiatrists, clinical psychologists, marriage and family therapists, clinical social workers, professional clinical counselors, dentists, and physician assistants. Within their respective medical institutions, peer bodies are formed to review the quality of professional care and to take actions against a licentiate for “medical disciplinary cause or reason.” When taking such an action, a peer review body must file an “805 report” with their respective licensing agency whenever “the peer review body, for medical disciplinary cause or reason, denies or rejects a licentiate’s application for membership or staff privileges; terminates or revokes a licentiate’s membership, staff privileges, or employment; or imposes restrictions (or restrictions are voluntarily accepted) on staff privileges, membership, or employment for a cumulative total of 30 days or more in a 12-month period.” The statute requires that the institution must file an 805 report “with the relevant agency within 15 days after the effective date” of any of the actions taken against a licentiate mentioned above.

The question MBC presented to the AG was whether the phrase “effective date” means the date of the peer body’s initial decision, or rather, the resolution of the peer body’s appeal process in the event that a licentiate chooses to appeal the peer body’s initial decision.

After conducting a statutory interpretation analysis, the AG concluded that the 805 report “must be filed within 15 days of the decision’s finality,” and that “[s]uch a decision becomes final after the peer review body’s appeals process is completed.” Under Business and Professions Code section 809.1, before the proposed decision becomes final, a licentiate “is entitled to written notice

of: the final proposed action; the fact that the action, ‘if adopted,’ will be reported under section 805; the right to request a hearing; and the time limit in which to request a hearing.” According to the AG opinion, section 809.1 “distinguishes between a proposed action and one that has been adopted, and calls for the filing of an 805 report only after the action is adopted, or, in other words, becomes final.”

The AG found further support for its definition of “effective date” in section 805.1 of the Business and Professions Code, which the legislature added in 2010, and requires an 805 report to be filed *before* a proposed action becomes final when the decision is based on acts of serious misconduct, such as “gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients,” or “[s]exual misconduct with one or more patients during a course of treatment or an examination.” According to the AG, the legislature’s addition of section 805.01 indicated its intent to balance “licensing agencies’ ability to investigate and take prompt action against troublesome, and potentially dangerous, licentiates” by carving out exceptions requiring immediate reporting concurrent with a licentiate’s appeal under particularly concerning or dangerous circumstances with “the fair process rights of licentiates by generally allowing licentiates to pursue their right to appeal before an 805 report is filed.”

## **MBC Advises Licensees of New Prescribing and Reporting Rules for Controlled Substances Effective January 1, 2021**

On October 2, 2020, the Board issued a [notice](#) to its licensees reminding them about two new requirements, effective January 1, 2021, regarding prescribing and reporting on controlled substances.

With respect to prescribing, all pads used to write and fill prescriptions for controlled substances will be required to have a 12-character serial number, a corresponding bar code, and other security features such as watermarks, thermochromic ink features, and anti-tampering and anti-copying features. This new requirement was imposed by [AB 149 \(Cooper\) \(Chapter 4, Statutes of 2019\)](#), which amended sections 11162.1 and 11164, and added section 11162.2 to the Health and Safety Code, and was signed by Governor Newsom on March 11, 2019.

Newly added section 11162.2 also prohibits pharmacists from filling a controlled substances written prescription that does not comply with the specified guidelines set forth in the bill after January 1, 2021 unless it is an emergency situation as defined by Health and Safety Code section 11167.

Since the beginning of 2020, the Department of Justice-approved security printers have been issuing prescription pads to prescribers and pharmacists. Additionally, the security printers themselves have an identifying number assigned to them for added security. The Board's notice reminded licensees that by January 1, 2022, aside from a few exceptions, all prescriptions must be submitted electronically and not written on paper pursuant to [AB 2789 \(Wood\) \(Chapter 438, Statutes of 2018\)](#).

With respect to reporting requirements, [AB 528 \(Low\) \(Chapter 677, Statutes of 2019\)](#) becomes effective on January 1, 2021. That bill amended section 209 of the Business and Professions Code, and amended, repealed, and added sections 11164.1, 11165, 11165.1, and 11165.4 of the Health and Safety Code to change the timeframe for dispensers to report dispensed prescriptions in the Controlled Substance Utilization Review and Evaluation System (CURES) database from seven days to the following working day after the medication is released to the

patient or the patient’s representative. According to the bill’s author, reducing the time a pharmacist has to report to CURES from seven days to one working day prevents “doctor shoppers” from visiting multiple prescribers over the course of a whole week to obtain multiple prescriptions. [[25:1 CRLR 52](#)] MBC’s notice also reminds licensees that this new law also requires reporting the dispensing of Schedule V drugs, in addition to Schedules II, III, and IV, and applies to pharmacists and prescribers who dispense controlled substances.

## **Department of Consumer Affairs Extends Series of Licensing Waivers Pertaining to MBC During State of Emergency**

On August 27, 2020, DCA Director, Kimberly Kirchmeyer, issued two orders extending the deadlines for licensing waivers issued as a result of Governor Newsom’s March 30, 2020, [State of Emergency proclamation](#) in California, and the corresponding [Executive Order N-39-20](#), issued as a result of the impacts of the COVID-19 pandemic. [[25:2 CRLR 35](#)].

First, [DCA-20-50](#) extends the deadline from June 30 to October 31, 2020 for all medical residents who were enrolled in an approved postgraduate training program in California as of January 1, 2020 to obtain a postgraduate training license from the Medical Board of California (MBC). The order clarifies that medical residents must still complete all other postgraduate training requirements during the extension period, including completing all applications and submitting supporting forms to MBC. If a resident physician does not obtain a license by October 31, 2020 (unless further extended), or the Board denies the application, the resident must stop all clinical training in California. This temporary waiver does not extend the time a resident can



practice medicine in a postgraduate training program beyond the 39-month licensing exemption in the Business and Professions Code sections 2064.5, subdivision (b) and 2065, subdivision (d).

Second, [DCA-20-53](#) temporarily waives, for physicians and surgeons whose active licenses expire between March 31, 2020 and October 31, 2020, any statutory or regulatory requirement that they take and pass an examination in order to renew a medical license, and any requirement that they demonstrate compliance with any continuing education requirements in order to renew a license. The order clarifies that the waiver does not apply to continuing education, training, or examinations required pursuant to a disciplinary order against a license. Licensees must satisfy any waived renewal requirements within six months of the order, unless further extended.

Subsequently, on September 17, 2020, Ms. Kirchmeyer issued [DCA-20-57](#), which temporarily waives statutory and regulatory requirements to allow physicians and surgeons who have recently retired, suspended, or surrendered their licenses within the past five years to voluntarily return to practice without meeting additional requirements that would typically be necessary to reinstate their license, including continuing education requirements, and licensing fees. The waiver does not apply to any license that was surrendered or revoked following a disciplinary action or any individual who retired, inactivated, or canceled their license following a disciplinary proceeding. A license reactivated or restored pursuant to this waiver is valid until January 1, 2021, or when the State of Emergency ends, whichever is sooner. Individuals reactivating their licenses under this exemption must still comply with any other reactivation or restoration requirements, including submitting required forms or written notices to MBC to

reactivate or restore the license. Those interested in renewing their license and joining the fight against COVID-19 may apply with [California Health Corps](#).

Finally, on September 30, DCA issued [DCA-20-65](#), which extends the deadline to December 31, 2020 for individuals who completed at least 36 months of approved postgraduate training outside of California, were enrolled in an approved postgraduate training program in California on July 1, 2020, and who are required to obtain a physician’s and surgeon’s license from the Medical Board of California within 90 days to continue the practice of medicine, pursuant to Business and Professions Code section 2065, subdivision (h). If the individual fails to obtain a license on or before December 31, 2020, or the Board denies the application, the individual must cease all clinical training in California until a physician and surgeon license is issued.

## **MBC Proposes Rule Change for Postgraduate Training Requirements**

On June 19, 2020, the Board published [notice](#) of its intent to amend sections 1320 and 1321, Title 16 of the California Code of Regulations (CCR) to modify postgraduate training requirements for licensees, as stated in the [proposed text](#).

According to the [Initial Statement of Reasons](#), the proposed rulemaking is necessary to implement [SB 798 \(Hill\) \(Chapter 775, Statutes of 2017\)](#), as clarified by [SB 1480 \(Hill\) \(Chapter 571, Statutes of 2018\)](#), which modified the time in which medical school graduates who are enrolled in an approved postgraduate training program may practice medicine in California without a physician’s and surgeon’s license—also known as a “licensing exemption period.” These bills, which became effective on January 1, 2020, amended section 2065 of the Business and Professions Code to set forth a uniform licensing exemption period, applicable to all

participants in approved postgraduate training programs—regardless of where they attended medical school. Previously, section 2065 permitted graduates of U.S. and Canadian medical schools to practice for two years while enrolled in a postgraduate training program before needing to obtain a license, while section 2066 permitted graduates of international medical schools to practice for three years while enrolled in a postgraduate training program.

Specifically, the Board proposes to amend section 1320 to set the licensing exemption period for all participants in approved postgraduate training programs at 39 months—90 days after successfully completing three years of approved training. The Board’s Initial Statement of Reasons also notes that the 39-month exemption applies regardless of whether the training program itself was successfully completed, noting that some postgraduate training programs may extend beyond three years.

The proposed amendments to section 1321 clarify that postgraduate training programs in the United States and/or its territories, or Canada that are accredited by the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or family medicine postgraduate training programs in Canada accredited by the College of Family Physicians of Canada, will be approved for postgraduate training. The Board also proposes to strike the language in subsection (b) stating that that the Board will maintain a current list of approved postgraduate training programs in its Sacramento office. According to the Initial Statement of Reasons, this language is unnecessary and an inefficient requirement for the Board to keep a list of training programs. Instead, interested parties can turn to the current status of each of the enumerated accrediting institutions for the most current status of approved programs.

The public comment period for the proposed amendments expired on August 3, 2020. At this writing, the Board has not taken further action.

## **AB 890 Allows Nurse Practitioners to Expand Their Scope of Practice Despite MBC Opposition**

[AB 890 \(Wood\)](#), as amended August 28, 2020, amends sections 650.01, 805, and 805.5 of, and adds Article 8.5 (commencing with section 2837.100) to the Business and Professions Code to authorize a two-tiered framework for certified nurse practitioners (NP) to practice independently, without the supervision of a physician or surgeon, if they meet certain educational, training, or examination requirements.

Prior to the passage of this bill, NPs must have physician supervision, and operate under specified protocols and procedures, which are developed collaboratively by nurses, physicians, and the administration of an organized health care system. The Board of Registered Nursing (BRN) and the Medical Board of California (MBC) have jointly promulgated guidelines for standardized procedures in section 1474, Title 16 of the California Code of Regulations. NPs are regulated by BRN.

This bill permits NPs in specified health care settings to operate independently from these established protocols and procedures if they complete a three year “transition to practice.” It also permits, as of January 1, 2023, NPs to operate independently from these protocols and procedures *outside* of a health care setting after completing the transition to practice.

Of note, AB 890 adds section 2837.102 to the Business and Professions Code to require BRN to establish a Nurse Practitioner Advisory Committee, consisting of four qualified nurse practitioners, two doctors with demonstrated experience working with nurse practitioners, and one

member of the public. The Committee will advise and make recommendations to BRN on all matters related to nurse practitioners, including education and appropriate standard of care, and will provide recommendations and guidance when the BRN is considering disciplinary action against a nurse practitioner. The bill also requires NPs to disclose to patients that they are not a physician, maintain professional liability insurance, and to refer patients to a physician if the condition of the patient is beyond the skill and training of the NP, among other requirements.

The bill also amends section 805 of the Business and Professions Code to require administrators of peer review entities to file reports with BRN if any adverse action is taken against an NP in a peer review process within 15 days, and clarifies that if a peer review body takes action as a result of BRN's or another state's licensing board's revocation or restriction of a NP's license, it need not file an 805 report.

At its August 13, 2020, [meeting](#), MBC discussed recent amendments to the bill—including the fact that the amended version of the bill creates a committee for independent nurse practitioners as opposed to a separate board as the bill originally opposed. The bill was also further amended to add additional requirements for a NP to practice independently, and to specify the circumstances under which a NP must consult with a physician. The Board discussed whether or not the amendments addressed its previous concerns from its May [meeting](#) (Agenda Item 10), when it voted to oppose the bill. At the May meeting, several Board members mentioned that the Board typically opposes scope of practice bills and questioned whether a NP board could adequately regulate independently practicing NPs. Others raised concerns that the bill would not address the need for underserved populations to access skilled healthcare. Ultimately, the Board unanimously

voted at both meetings to oppose the bill, and the Board maintained its opposition as the bill was subsequently amended in August.

Governor Newsom signed AB 890 on September 29, 2020 (Chapter 265, Statutes of 2020).

## MAJOR PUBLICATIONS

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

- [2019–2020 Annual Report](#), Medical Board of California, Fall 2020 (Annual report summarizing Board activity for fiscal year 2019–20; reports that MBC received 10,868 complaints and opened 1,956 investigations (as compared to 11,407 and 1,544 respectively, in 2018–2019); forwarded 563 cases to the Attorney General, down from 638 the previous year; and the Attorney General filed 308 accusations, a decrease from 396 in 2018–2019. Reports a total of 399 disciplinary actions: 28 revocations, 89 license surrenders, 4 probations with suspension, 130 probations, and 107 public reprimands. Additionally, the Board issued 62 citations and fines, and obtained 14 interim suspension orders and 42 other suspension orders.)

## LEGISLATION

- [AB 1710 \(Wood\)](#), as amended August 24, 2020, amends section 4052.8 of the Business and Professions Code to authorize pharmacists to independently initiate and administer any COVID-19 vaccine approved by the federal Food and Drug Administration (FDA) to persons three years of age or older. According to the author, “There is no clinical need to take up a physician’s time to administer vaccinations. With the ever growing strain on the healthcare system, it is imperative that we remove barriers to pharmacist’s ability to provide services which do not

require a physician’s interaction.” At its August 13, 2020 meeting, the Board voted to support the bill. Governor Newsom signed AB 1710 on September 24, 2020 (Chapter 123, Statutes of 2020).

- [SB 1237 \(Dodd\)](#), as amended August 25, 2020, amends section 650.01 of the Business and Professions Code, and various sections of the Nursing Practice Act to allow certified nurse-midwives (CNM) to attend low-risk pregnancies and provide prenatal, intrapartum, and postpartum care services, without the supervision of a physician and surgeon. According to the author, “This is a first step toward truly integrating nurse-midwifery and obstetrical care, so that diverse patient needs can be attended to by a diverse provider group, working together toward shared goals.” At its meeting on August 13, 2020, the Board voted to support the bill. Governor Newsom signed SB 1237 on September 18, 2020 (Chapter 88, Statutes of 2020).

- [AB 2273 \(Bloom\)](#), as amended on August 25, 2020, amends sections 2111, 2113, 2168, 2168.1, and 2168.2, and adds section 2168.5 to the Business and Professions Code to authorize an academic medical center to submit applications for Special Faculty Permits (SFP) from the Board, and authorizes a SFP holder to practice medicine within the academic medical center and its affiliated facilities. According to the author, the bill, which was sponsored by Cedars Sinai, “allows nationally recognized independent academic medical centers to sponsor outstanding foreign trained academic physicians for special licensure in the state. The specialized faculty physicians . . . teach, perform research, and greatly and positively impact medical care of California’s citizens . . . . This legislation will make it more likely that these few, but important, independent medical centers can continue to excel in their multiple missions by attracting the very best physicians in the world.” On September 29, 2020 Governor Newsom signed AB 2273 (Chapter 280, Statutes of 2020).

- [SB 1474 \(Committee on Business, Professions and Economic Development\)](#), an omnibus bill, as amended on August 26, 2020, as it applies to MBC, amends sections 2065, 2113, and 2135.5 of the Business and Professions code to make clarifying amendments to implement [SB 798 \(Hill\) \(Chapter 775, Statutes of 2017\)](#), which made changes to MBC’s postgraduate training requirements for licensure. The bill also clarifies that if an order of abatement has been issued with a citation or fine upon a licensee, the administrative action is not resolved unless the order of abatement has been complied with along with meeting the fine requirements, pertaining to the Medical Board to change licensure requirements for physicians and surgeons, to amend rules for out-of-state doctors. Governor Newsom signed SB 1474 on September 29, 2020 (Chapter 312, Statutes of 2020).

The following bills, reported in Volume 25, No. 2 (Spring 2020), no longer pertain to the Board, died in committee, or otherwise failed to be enacted during the 2019–2020 legislative session: [SB 1278 \(Bradford\)](#), regarding “telehealth”; [SB 480 \(Archuleta\)](#), regarding Radiologist Assistants; [AB 2515 \(Nazarian\)](#), regarding continuation medical education on elderly medicine; [AB 1909 \(Gonzalez\)](#), regarding virginity tests; [SB 201 \(Wiener\)](#), relating to sex characteristics; [AB 387 \(Gabriel\)](#), regarding a task force to investigate adverse drug events; [AB 1030 \(Calderon\)](#), relating to pelvic exams; [AB 544 \(Brough\)](#), regarding inactive license fees; [AB 370 \(Voepel\)](#), regarding fee limitations; [AB 2239 \(Maienschein and Chiu\)](#), relating to the Medically Underserved Account for Physicians; [AB 2478 \(Carrillo\)](#), relating to international medical graduates; [AB 2004 \(Calderon\)](#), relating to medical test results and verification credentials; and [AB 2435 \(Oberholte\)](#), relating to licensure and examination of physicians and surgeons.