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 § 2001.1

The 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 April 19, 2021, the Speaker of the Assembly appointed David Ryu as a public member of the Board. Mr. Ryu is a former Los Angeles City Councilmember, ethics reformer, and community mental healthcare advocate. He previously served as the Director of Development & Public Affairs at Kedren Community Health Center.

On June 25, 2021, Governor Newsom appointed Dr. James M. Healzer as a physician member of the Board. Dr. Healzer has been Chair of the Chiefs of Quality for the Permanente Medical Group and Chair of the Permanente Federation's Peer Review Advisory Committee. He is certified by the American Board of Anesthesiology and the American Board of Internal Medicine.

At its August 19, 2021 meeting [Agenda Item 24], the Board unanimously voted to re-elect public member Kristina D. Lawson as President, Dr. Randy W. Hawkins as Vice President, and public member Laurie Rose Lubiano as Secretary of the Board.

HIGHLIGHTS

Board Proposes Rulemaking to Expand Approved Medical and Midwife Assistant Certifying Organizations

On June 4, 2021, MBC published notice of its intent to amend sections 1366.3, 1366.31, and 1379.07, Title 16 of the CCR regarding Medical and Midwife Assistant Certifying Organizations and Administration of Training for Medical Assistants, which is set forth in the proposed language. According to the notice, this proposal will allow for-profit medical and midwife assistant certifying organizations to be eligible for Board approval if they are accredited by the National Commission of Certifying Agencies (NCCA) and meet other existing requirements for applicants. The Board noted that "[e]liminating the requirement that the certifying organization be non-profit may result in an increase in medical and midwife assistant certifying organizations, which could increase the options for medical and midwife assistants to choose an approved certifying organization that meets their needs."

The Board, in its initial statement of reasons, outlined a petition for rulemaking it had received on November 9, 2018, that requested the removal of the requirement that medical assistant certifying organizations approved by the Board be non-profit or tax-exempt organizations. Currently, California law does not require medical or midwife assistants to be certified by an organization unless the assistant is providing training to other assistants. However, for an assistant to become certified, they must go through a certifying organization that is a non-profit and is approved by the Board. In the petition, Ellison Wilson Advocacy, LLC, on behalf of the National

Healthcareer Association (NHA), argued that the quality of certifying organizations has no correlation with being non-profit and tax-exempt.

At its August 9, 2019 meeting [Agenda Item 23], the Board discussed the petition and approved the proposed language as outlined in this rulemaking proposal. Several Board members agreed the petition was necessary and should move forward for rulemaking. A few members expressed that they believed the proposed amendment would ensure a broader range of higher-quality certification programs. The main concern raised was the issue of public transparency, as one Board member stated his opinion that for-profit companies should disclose their status to the public.

As outlined in the initial statement of reasons, the first amendment to section 1366.3(a)(2) would update the language that describes medical assistant education programs by making the language consistent with the Education Code and current law. This amendment would also clarify the proper administration of training of medical assistants and identify the appropriate oversight agencies.

The second proposed change to amend section 1366.31 would update the language regarding medical assistant applicant information. It would also replace the previous language regarding accrediting organizations with new, more specific language that would require certifying agencies to establish their accreditation with the NCCA. The amendment would eliminate the requirement for organizations to be non-profit or tax-exempt. This is perhaps the most significant change, as this was the goal of the petition.

The last proposed change to amend section 1379.07(a)(4) would clarify that the Board accepts accreditation from the NCCA. It would also eliminate the requirement for the certifying organizations to be non-profit or tax-exempt.

The public comment period for these amendments ended on July 20, 2021. At this writing, the Board has not taken further action on this proposed rulemaking.

Medical Board Releases Its 2020–2021 Annual Report

On October 5, 2021, MBC released its Annual Report for 2020–2021 to the public. The Annual Report updates stakeholders on new legislation and describes the Board's work over the past fiscal year.

This past year, the Board focused on coordinating meetings and addressing other operational issues as a result of the COVID-19 pandemic. During the 2020–2021 fiscal year, the Board received 7,798 license applications, issued 8,206 licenses, renewed 70,802 licenses, and received 10,103 complaints. MBC officers and executive staff also represented the Board at two sunset hearings before a joint session of the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee: one on March 19, 2021, regarding the Board's enforcement program, and a second hearing on May 5, 2021, focused on the Board's licensing processes. *[26:2 CRLR 49–50]*

This fiscal year, the Board increased the frequency of its public stakeholder meetings to engage in more dialogue between the Board and the public. At its April 21, 2021 stakeholder meeting, Bridget Gramme of the Consumer Protection Policy Center gave a presentation on tools consumers can use to communicate with the Board and how to amplify the public's voice. The

Board's stated goal is to expand communication with public stakeholders to continue its mission of protecting consumers.

The report includes updates on the Board's licensing program, which sets requirements for licensure in California. This year, the Board focused on adapting to telework as a result of the COVID-19 pandemic and improving the application process to make them more efficient. The Board attempted to streamline application processes and make applying more convenient by providing more electronic document submission options. The Board also made license transitioning more efficient for postgraduates trying to obtain a physician or surgeon's license. The new applications simplify the process by eliminating the requirement that applicants provide documentation they already provided for their previous postgraduate applications.

The Board noted in its budget summary that physicians' renewal fees are the primary source of revenue for the Board. The enforcement program accounts for 81 percent of the Board's expenditures, while the licensing program accounts for eight percent. Notably, the Annual Report states that total revenue is $61,311,000, yet its expenditures are $73,357,000. The report does not explain how those expenditures over revenues are paid for, but the Board sought a fee increase from the legislature during the sunset review process. It will receive a modest increase beginning in 2022 (see LEGISLATION).

The Board received 10,103 complaints this past fiscal year and managed them through the Board's enforcement program. The Central Complaint Unit (CCU) worked to make the online complaint process more accessible during the COVID-19 pandemic. In the report, the Board explains the process of complaint evaluation and the data for the 2020-2021 fiscal year, including that 42% of complaints received for the fiscal year were unactionable for reasons such as

redundancy, lacking necessary information, and being beyond the Board's jurisdiction. These complaints are closed without a referral for investigation, and the remaining complaints are subject to investigation and disciplinary processes. The Board also closed complaints based on insufficient evidence, lack of violation of the Medical Practice Act, no response from complainant when contacted for more information, and the passing of the statute of limitations. The report ends with statistics on allied healthcare professionals, as well as a breakdown of the complaints received against physicians and surgeons and statistics on substance abuse in the medical field.

Board Amends Regulations Regarding Postgraduate Training for Medical School Graduates

On June 11, 2021, the Office of Administrative Law (OAL) approved MBC's proposed amendments to sections 1320 and 1321, Title 16 of the CCR to implement SB 798 (Hill) (Chapter 775, Statutes of 2017), which became operative on January 1, 2020, and made revisions to postgraduate training and licensing requirements for physicians and surgeons to streamline the process for recognizing international medical schools, as well as modified the licensing exemption period to make it uniform for both domestic and international medical schools. SB 798 also specified the amount of postgraduate training necessary for a license. MBC sought to take regulatory action to amend sections 1320 and 1321 in order to conform to the new changes in law as a result of this bill, as explained in the Board's initial statement of reasons. The Board originally commenced the rulemaking process on these proposed regulations on June 19, 2020, through its published notice. *[See 26:1 CRLR 43–45]*

Through these regulatory changes, the Board standardized the license exemption period. Prior to SB 798, the license exemption period was one to two years, depending on where the

applicant went to school. These changes amend section 1320(a) to make the license exemption period 39 months for all applications, regardless of whether their school is domestic or international. The amendment also requires applicants to demonstrate that they have successfully completed at least 36 months of approved postgraduate training to qualify for a physician's and surgeon's license. The proposed amendment clarifies that all approved postgraduate training for which an applicant received credit is counted towards the 39-month exemption period, regardless of whether the postgraduate training program was successfully completed. These regulatory changes amend section 1320(b) to clarify that a person must have graduated from an approved medical school to participate in a guest rotation in an approved postgraduate training program in California.

The Board also amended sections 1321(a) through (c) regarding approved postgraduate training. New section 1321(a) clarifies that postgraduate programs in the United States, its territories, and in Canada that are accredited by specified associations shall be approved for postgraduate training. The proposed amendment also strikes unnecessary language and makes non-substantive changes to language for clarity. The amendment to section 1321(c) strikes the requirement for postgraduate training programs to be completed prior to qualifying for a physician's or surgeon's license and clarifies that an applicant who has been formally admitted to any approved postgraduate training program qualifies for licensure. Last, the proposal re-letters sections 1321(d) to 1321(c) and eliminates the distinction between graduates of domestic and international medical schools, again to conform to the changes made by SB 798.

The Board did not schedule a public hearing for this action, as it received no written request during the public comment period. The new regulations went into effect on June 11, 2021.

California Supreme Court Defines Scope of Anti-SLAPP Law in Peer Review Proceedings Dispute

On July 29, 2021, in ***Bonni v. St. Joseph Health System*, 11 Cal. 5th 995 (2021)**, the California Supreme Court issued an opinion holding that statements made in connection with peer review proceedings and the required reporting of any proceeding decisions to MBC are protected activity under the anti-SLAPP law (Code of Civil Procedure section 425.16), but the discipline imposed through the peer review process is not protected activity.

This case arose because in 2014, Aram Bonni, M.D., a surgeon specializing in obstetrics and gynecology, sued St. Joseph for retaliation and other claims. Leading up to the lawsuit, Bonni performed three surgeries that resulted in patient complications. On these three occasions, Bonni alleges that he expressed concerns about the robotic assistant used in the surgeries because it malfunctioned by supplying only two-dimensional imaging instead of three-dimensional. After the third surgery, Bonni faced peer review proceedings, after which St. Joseph terminated him and reported the disciplinary action to MBC. Bonni sued, alleging that St. Joseph retaliated against him because he presented complaints about the quality of patient care to other members of the medical staff. In response, St. Joseph sought to strike the retaliation claim under anti-SLAPP law and argued that peer review proceedings are protected activity.

Under California law, peer review is primarily designed to ensure the maintenance of high professional standards and the protection of patient welfare. When conducted fairly, it helps discipline physicians and protect the welfare of patients. If the peer review follows unfair procedures, it harms both patients and physicians because it excludes competent professionals and limits patient access to health care.

The California Supreme Court previously held in *Kibler v. Northern Inyo County Local Hospital Dist.*, 39 Cal. 4th 192 (2006) that hospital peer review proceedings are official proceedings under anti-SLAPP law; thus, the law protects the "speech and petitioning in connection with hospital peer review."

Anti-SLAPP is a law to protect people from meritless lawsuits that might limit their rights to speak on public matters. To define the scope of the anti-SLAPP law, the Court held in *Bonni* that the anti-SLAPP statute protects alleged statements made in peer review proceedings and any required reporting to MBC. However, anti-SLAPP law does not protect any final disciplinary decisions made. The protection extends to criticisms of a doctor, the Court reasoned, so that the reviewing body can openly discuss the competence without fearing harassing lawsuits, but the final decision is not protected because of its disconnection from the speech. The Court explained that denying protection to the peer review decision itself would not prevent hospitals from making appropriate disciplinary decisions based on statements made in the peer-review process.

As a result of its holding, the Court denied the hospital's motion to strike Bonni's claim because anti-SLAPP does not protect the discipline imposed central to Bonni's retaliation claim. The Court remanded the case to consider in the first instance whether Bonni has met his second-step burden for those discrete claims arising from protected activity.

Medical Board Extended Two More Years after Undergoing Substantial Sunset Review and Major Reform Discussion

On October 7, 2021, Governor Newsom signed MBC's sunset extension bill, SB 806 (Roth) (Chapter 649, Statutes of 2021), which extends the Board's sunset date for just two years,

to January 1, 2024 (see LEGISLATION). The bill extends the provisions establishing the Osteopathic Medical Board of California (OMBC), the Podiatric Medical Board of California (PMBC), and the Physician Assistant Board (PAB) to January 1, 2026. The Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions held two Joint Sunset Review Oversight Hearings (Joint Hearings) on March 19, 2021, and May 5, 2021, to discuss issues raised by MBC in its Sunset Review Report.

On April 30, 2021, MBC issued a response to questions posed during the joint hearing on March 19, 2021. In its response, the Board gave a detailed overview of the Board's disciplinary process, including how it investigates complaints, the benefits of settling a case, communication with complainants, and initiation of complaints by the Board. The Board provided data from recent fiscal years to answer questions from the March Joint Hearing, such as the percentage of stipulated settlements that followed disciplinary guidelines, percentage of stipulated settlements that used public reprimand as a penalty, number of cases that resulted in licensed revocation, and the number of medical experts the Board has for each specialty. The Board goes into further detail on the disciplinary process in its responses on the complaint process (Issue #16); the impact of settlements (Issue #18); and the enforcement enhancements, disclosures, and delays (Issues #19, #20, and #21 respectively).

The discussion lasted almost three hours during the second joint hearing on May 5, 2021. It focused on various issues set forth by the Legislative Committee in the background paper regarding MBC in areas other than enforcement, which was covered during the first joint hearing on March 19, 2021. *[26:2 CRLR 48–50]* There was discussion on implementing the Physician and Surgeon Health and Wellness Program (PSHWP) (Issue #5) that the Board is working on with the

Director of Consumer Affairs (DCA) Regulations Unit. The Board's Staff Counsel, Kerrie Webb, emphasized that PSHWP is not a diversion program and that it is a priority of the Board to create an effective program to assist physicians without creating risk to patients and public safety. The Board and Legislative Committee also discussed at length licensed midwives (LMs) and the Board's position set forth in the sunset report that a new licensed midwife board would be more appropriate to handle licensing and disciplinary responsibilities of LMs. Although SB 806 does not create a new LM board within the DCA, it does add section 2519.5 to Business and Professions Code that requires experts with education, training, and expertise in midwifery to review midwifery complaints (Issue #7). There was also discussion on postgraduate training licenses (PTL), which are considered restricted under federal law and cannot qualify for payment of Medi-Cal services. The Board plans on continuing to work with stakeholders, including the California Department of Healthcare Services (DHCS) and the California Academy of Family Physicians (CAFP), and reaching out to other states with licenses similar to PTLs. The Board anticipates returning to these issues in further discussions at a later date.

During its August 19, 2021 meeting, the Board maintained its position to support the bill if amended to include a public member majority on the Board (Issue #1), to increase the fees to the originally requested amount in the Sunset Report (Issue #9), and to have a four-year sunset extension rather than a two-year extension. Although these proposals were not included, other key points discussed during the sunset process that were included in the final version of the bill are set forth below.

Section 125.3 of the Business and Professions Code is amended to include a cost recovery provision, allowing MBC to recover the costs of investigation and prosecution for a successful

disciplinary proceeding against a physician licensee (Issue #8). The Board believes this provision will help offset costs and incentivize licensees to settle cases, allowing for quicker discipline and less cost for administrative hearings.

The bill amends various sections of the Business and Professions Code to increase fees for all MBC-regulated licenses starting on January 1, 2022 (Issue #9). The legislature is required to review the fees again in 2022 to decide whether to increase the fees more to ensure the adequacy of the Board's contingent funds. At the August 19, 2021 meeting, Executive Director William Prashifka stated that the Board was disappointed to see the fund increase lowered because insufficient operation funds will render the Board ineffective. The Board estimates that its funds will go negative during FY 2022–23 with the fee levels set forth in SB 806.

Section 2097 updates the PTL program (Issue #11) by renaming it to "postgraduate license" and allowing these licensees to qualify for a physician's license if they receive credit for 36 months of postgraduate training. This provision changes the current law, which required PTL holders to complete 24 continuous months in the same program out of the 36 months of training, which prevented them from qualifying if they took a leave of absence during training.

Section 2220.01 requires the DCA to appoint an independent enforcement monitor by March 1, 2022, to evaluate the Board's enforcement processes, such as the handling and processing of complaints and timely application discipline imposed upon licensees. The monitor would report its findings to the Legislator and MBC and would give the Board the opportunity to reply to the report on any findings with which it disagrees.

Section 2227.3 is added to allow the executive director to resolve complaints for minor violations of the Medical Practice Act by issuing a confidential letter of advice to be complied

with (Issue #17). The Board anticipates implementing this provision through the rulemaking process to decide how the confidential letter mechanism will work.

All of the new amendments to the Business and Professions Code in SB 806 become effective January 1, 2022. The Board will release information on its website as soon as possible regarding new licensing fees and renewals, as well as other information that could impact the public, applicants, and licensees. The legislature will review the Board again in 2024.

SB 65 Seeks to Address Racial Inequities in Reproductive Care by Increasing the Number of Students in Licensed Midwife Training Programs

SB 65 (Skinner), as amended September 2, 2021, and as it applies to MBC, adds Article 4 (commencing with section 128295) to the Health and Safety Code to require the Office of Statewide Health Planning and Development (OSHPD) to contract with programs that train licensed midwives to increase the number of students.

MBC oversees the regulation of licensed midwives, which is authorized by the Licensed Midwifery Practice Act of 1993. The Board has a Midwife Advisory Council (MAC), which assists the Board with regulatory, policy, and procedural issues impacting the midwifery program; and a midwifery task force, which acts as a liaison with MAC and reviews laws and regulations involving licensed midwives. According to the Board's website, LMs are authorized by the Board to attend pregnancy and childbirth, as well as provide care for family planning. LMs can also assist the mother and the newborn during the various stages of pregnancy, including prenatal, intrapartum, and postpartum. LMs are required to report data to OSDHPD, which then reports aggregate

information to both the Board and Midwifery Advisory Council and is compiled into an annual report.

SB 65, or the California Momnibus Act, addresses the high rates of maternal and infant mortality attributed to racism and racial bias in health care. The COVID-19 pandemic made the racial and socioeconomic disparities in the health care system more apparent. California has one of the lowest maternal mortality rates in the country; however, Black and Native American pregnant and postpartum individuals in California die at higher rates than their white counterparts. The goal of the bill is to create better support for these individuals and uses Article 4, the Midwifery Workforce Training Act, as a method to do so.

Section 128296 of the bill explains that there is a low supply of maternity care providers and maldistributed across the state. The shortage is predicted to become critical by 2025. People of color are significantly impacted by not having access to quality maternity care. The bill finds that "black women die from pregnancy-related causes at a rate of three to four times that of white women." The bill also states that "black infants are more than twice as likely to die in their first year as white infants."

To help address the inadequate access to reproductive care throughout California and the low supply of certified nurse-midwives (CNMs) and LMs, OSHPD will create a program that will contract with midwife training programs that include, or intend to include a training component for underserved, lower socioeconomic, multicultural, or rural communities, or seek to recruit diverse students from such communities. According to section 128298, OSHPD may create regulations to implement SB 65 and accept the Board's educational standards for programs that train licensed midwives. However, OSHPD shall not adopt educational standards beyond what the

Board already requires so that no standards are created that could pose potential barriers for midwifery training programs to obtain funding.

The Midwifery Advisory Council will next meet on December 9, 2021, and will discuss, among other agenda topics, updates on midwifery-related legislation, updates on the midwifery program, and updates on the proposed regulatory language of the required annual report. The Board did not take a position on SB 65; however, the Board explained in its 2020 Sunset Review Report that they support licensed midwives establishing a separate Board and to be regulated by a separate entity.

Governor Newsom signed SB 65 on October 4, 2021 (Chapter 449, Statutes of 2021).

RULEMAKING

The following is a status update on recent rulemaking proceedings that MBC has initiated:

- **Notice to Consumers**: On November 12, 2021, MBC published notice of its intent to amend sections 1355.4 and 1379.58 and adopt sections 1378.5 and 1379.4, Title 16 of the CCR to require the Board's licensees to give notice that clients can check a practitioner's license and submit complaints against a practitioner on the Board's website. According to the initial statement of reasons, the proposed language, which the Board approved on at its July 26, 2018 meeting (Agenda Item 9), implements section 2026 of the Business and Professions Code, added by SB 798 (Hill) (Chapter 775, Statues of 2017), which requires the Board to adopt regulations to mandate the required disclosures to consumers. *[24:1 CRLR 54*; *23:1 CRLR 60]*. The proposed language would require clients to sign an acknowledgment of receipt and understanding that the practitioner provided the notice in the client's primary language and included the Board's website,

email address, and phone number as contact methods for complaints. The notification requirement would apply to physicians, surgeons, research psychoanalysts, licensed midwives, and polysomnography registrants. The Board has not scheduled a public hearing but will hold one if it receives a written request for a public hearing no later than 15 days prior to the close of the written comment period, which expires on December 27, 2021.

- **Postgraduate Training**: On June 11, 2021, OAL approved MBC's proposed amendments to sections 1320 and 1321, Title 16 of the CCR pertaining to postgraduate training for medical school graduates seeking to qualify for a physician's and surgeon's license. The new regulations became effective on June 11, 2021 (see HIGHLIGHTS).

- **Medical and Midwife Assistant Certifying Agencies**: On June 4, 2011, MBC published notice of its intent to amend sections 1366.3, 1366.31, and 1379.07, Title 16 of the CCR pertaining to the requirements for Medical and Midwife Assistant Certifying Agencies. The comment period for this amendment ended on July 20, 2021 (see HIGHLIGHTS).

LEGISLATION

- **SB 806 (Roth)**, as amended September 3, 2021, amends various sections to the Business and Professions Code and extends the Board's operations to January 1, 2024. Governor Newsom signed SB 806 on October 7, 2021 (Chapter 649, Statues of 2021) (see HIGHLIGHTS).

- **AB 356 (Chen)**, as amended September 3, 2021, amends section 107110 of the Health and Safety Code to authorize the California Department of Public Health to issue a temporary permit to operate fluoroscopic x-ray equipment to physicians, surgeons, or podiatric medical doctors if they meet certain requirements. According to the author, the bill helps surgical

patients by allowing out-of-state doctors who have used fluoroscopy to get a temporary permit to use this type of medical imaging while they complete the requirements to obtain a California permit. During its May 13, 2021 meeting, the Board voted to support the bill. Governor Newsom signed AB 356 on October 4, 2021 (Chapter 459, Statues of 2021).

- **SB 65 (Skinner)**, as amended September 2, 2021, and as it applies to MBC, adds Article 4 (commencing with section 128295) to the Health and Safety Code and requires OSHPD to contract with programs that train licensed midwives to increase the number of students. Governor Newsom signed SB 65 on October 4, 2021 (Chapter 449, Statutes of 2021) (see HIGHLIGHTS).

- **SB 380 (Eggman)**, as amended August 30, 2021, amends sections 443.1, 443.3, 443.4, 443.5, 443.11, 443.14, 443.15, and 443.17, and repeals and adds section 443.215 of the Health and Safety Code to extend the End of Life Option Act (EOLA) from January 1, 2026, to January 1, 2031. The bill requires health care providers who are unable or unwilling to participate in the aid-in-dying process to document a patient's request for the medication and transfer the medical record to a different provider upon request. The bill also deletes the requirement for physicians to give the patient a final attestation form. Governor Newsom signed AB 380 on October 5, 2021 (Chapter 542, Statues of 2021).

- **SB 48 (Limón)**, as amended August 16, 2021, adds section 14132.171 to expand Medi-Cal benefits to include an annual cognitive health assessment for Medi-Cal beneficiaries who are 65 years of age or older. According to the author, this bill creates an innovative program to give Medi-Cal providers training, validated assessment tools, and payment incentives for conducting cognitive health assessments in order to achieve the statewide goal of improved

Alzheimer's detection and diagnosis. Governor Newsom signed SB 48 on October 4, 2021 (Chapter 484, Statutes of 2021)

- **AB 107 (Salas)**, as amended September 2, 2021, amends section 115.6 of the Business and Professions Code and adds section 95 to the Military and Veterans Code to allow MBC and other licensing boards to grant temporary licenses to out-of-state licensed applicants who are veterans, service members, or military spouses. Governor Newsom signed AB 107 into law on October 8, 2021 (Chapter 693, Statutes of 2021).

- **AB 359 (Cooper)**, as amended August 26, 2021, amends sections 2177 and 2190.15 of the Business and Professions Code to authorize applicants who took more than four tries to pass Step 3 of the United States Medical Licensing Examination but have a license in another state, to qualify for a California physician's and surgeon's license if they meet existing requirements for out-of-state licensed applicants. The bill also relaxes restrictions on continuing medical education requirements with the broader criteria for acceptable courses. The bill is in response to the declared state of emergency in California due to the COVID-19 pandemic. Governor Newsom signed AB 359 into law on October 7, 2021 (Chapter 612, Statutes of 2021). As an urgency statute, the bill took immediate effect to remedy the shortage of physicians and surgeons in California amid the pandemic.

- **SB 310 (Rubio)**, as amended August 30, 2021, adds article 11.7 (commencing with section 4169.7) to chapter 9 of division 2 of the Business and Professions Code and adds division 117 (commencing with section 15400) to the Health and Safety Code. This bill establishes the Cancer Medication Recycling Act until January 1, 2027, to allow for the donation and redistribution of cancer drugs between patients of a participating physician. The bill would require

each participating practitioner to register annually with a licensed surplus medication collection and distribution intermediary. Donors would be exempt from criminal and civil liability arising from participating in the program. The bill also imposes a state-mandated local program. Governor Newsom signed AB 359 into law on October 5, 2021 (Chapter 541, Statutes of 2021).

- **AB 1096 (Luz Rivas)**, as amended September 3, 2021, as it applies to the Medical Board, amends Business & Professions Code sections 2064.3 and 2064.4. This bill removes the dehumanizing term "alien" from various sections of the California Code where it appears and replace it with other more appropriate terms, depending on the context. According to the author, AB 1096 "gives California the opportunity to change the narrative around immigration by removing the term 'alien' from California law and replacing it with more inclusive legal terms." Governor Newsom signed AB 1096 into law on September 24, 2021 (Chapter 296, Statutes of 2021).

- **AB 1171 (Garcia)**, as amended September 2, 2021, amends Business and Professions Code section 2236.1 to state that a physician or surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. Governor Newsom signed AB 1171 into law on October 7, 2021 (Chapter 626, Statutes of 2021).

The following bills, reported in Volume 26, No. 2 (Spring 2021) no longer pertain to the Board, died in committee, or otherwise failed to be enacted during the 2020–2021 legislative session: AB 32 (Aguiar-Curry), regarding "telehealth"; AB 225 (Gray), regarding licenses of veterans or their spouses; AB 443 (Carrillo), regarding international medical graduate license; AB

1278 (Nazarian), regarding disclosure of open payments; SB 40 (Hurtado), regarding California Medicine Scholars Program; SB 57 (Weiner), regarding overdose prevention programs.

LITIGATION

- ***Bonni v. St. Joseph Health System*, Case No. S244148, 11 Cal. 5th 995 (2021)**: On July 29, 2021, the California Supreme Court held that statements made in connection with peer review proceedings and the required reporting of any proceeding decisions to MBC are protected activity under the anti-SLAPP law, but the discipline imposed through the peer review process is not protected activity (see HIGHLIGHTS).

- ***Li v. Superior Court of Sacramento County*, Case No. C092584 (Cal. Ct. App., 3d Dist.)**: On October 19, 2021, the Third District Court of Appeal of the State of California denied Dr. Li's petition for rehearing on his writ of mandate. After MBC revoked Dr. Li's medical license, he petitioned for a writ of administrative mandate challenging the Board's decision. Li challenged the validity of the *Chamberlain* ruling, which stated that the courts exercising independent judgment must determine if the findings are supported by a preponderance of the evidence, even though the clear and convincing evidence standard applies in the underlying proceeding. Li argued that *Chamberlain* is no longer good law due to *Conservatorship of O.B.*, which held that a court applying substantial evidence review must account for the standard of proof used in the underlying proceeding. The trial court denied relief, which led to Li petitioning for a writ of mandate from the Court of Appeal. The Court of Appeal sided with Li on the Chamberlain issue and held that the independent judgment standard, like the substantial evidence standard, requires a reviewing court to view the record through the lens of the standard of proof that applied in the underlying

proceeding. However, the Court of Appeal denied writ relief because Dr. Li failed to demonstrate that the trial court would have ruled differently if it had considered the standard of proof used in the underlying proceeding.