

# MEDICAL BOARD OF CALIFORNIA

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*Executive Director, William Prasifka: (916) 263-2389 ♦ License Verification, General Licensing, Application and Complaint Information (Toll-Free): 1-800-633-2322 ♦ Website: [www.mbc.ca.gov](http://www.mbc.ca.gov)*

*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.

At this writing, the Board has four vacancies—two physicians and two public members—which must be filled by Governor Gavin Newsom. Additionally, the Board is actively accepting applications for one licensed midwife, one licensed physician, and one public member to fill the three vacancies on the Midwifery Advisory Council.

## **HIGHLIGHTS**

### **AB 1636 Aims to Prevent Licensure of Physicians and Surgeons Who Have Committed Sexual Misconduct**

[AB 1636 \(Weber\)](#), as amended April 5, 2022, would amend sections 2221, 2232, and 2307 of the Business and Professions Code, pertaining to MBC, obligations to deny and revoke licensure to individuals who have been or would have been required to register as a sex offender or formally disciplined for sexual misconduct in any state, as well as prevent applicants from reapplying or petitioning the courts for reinstatement. According to the [California Medical Association](#) (“CMA”), the sponsor of the bill, AB 1636 helps ensure that the Board prohibits practitioners who

commit sexual offenses from both acquiring and reinstating their license, which has been the focus of an ongoing [investigation](#) by the Los Angeles Times. The investigation found that since 2013, MBC had reinstated ten licenses to individuals whose discipline resulted from sexual misconduct.

Currently, section 2221 allows the Board to deny a physician's and surgeon's certificate ("P&S certificate") to an applicant who is actively registered as a sex offender in California, not including those whose registration resulted from a misdemeanor conviction. AB 1636, as it amends the law today, would broaden the language to include denial to an applicant who has been registered as a sex offender in any state. The proposed language also includes P&S denial if the applicant was convicted of any offense that, if committed in California, would have required sex offender registration. The bill would also require the Board to deny an application for licensure if the applicant was convicted of any offense that, if committed in California, would have required sex offender registration. Additionally, the bill would include applicants that were disciplined by a different licensing board for an offense that would have also required discipline based on sexual misconduct in California *and* if the offense was with a patient or with a former patient if the relationship was terminated for the purpose of committing the offense. Furthermore, the bill would prevent applicants from reapplying if their denial was pursuant to these sexual misconduct provisions.

Section 2232 allows the Board to revoke the license of a practitioner who is being required to register as a sex offender in California. AB 1636 would include automatic revocation if the licensee's conduct in another state would have been subject to sex offender registration in California and if the offense involved current or certain former patients. The bill would also delete

the provision that permits disciplined individuals to petition the superior court to determine whether the individual still poses a risk to patients.

Section 2307 explains situations in which the Board may reinstate or modify penalties for disciplined petitioners. AB 1636 would add language that prohibits the Board from reinstating a P&S certificate to individuals whose licensure was surrendered or revoked based on sexual abuse, sexual misconduct, or sexual exploitation, including conduct that occurred outside of California.

At its February 11, 2022, [quarterly meeting](#), the staff presented its legislative [analysis](#) on AB 1636 to the Board, including its recommended amendments. According to the staff analysis, the bill should be amended to address the requirements of section 480 of the Business and Professions Code, which prevents the Board from denying licensure based on a conviction if the applicant obtained a certificate of rehabilitation or expungement. [\[24:1 CRLR 66\]](#) Without amending language to clarify that AB 1636 supersedes section 480, the Board would not be able to deny applicants with expunged sexual offenses. Furthermore, while the bill proposes language to include licensure denial or revocation for conduct outside of California, the language is limited to situations where the offense would have required sex offender registration *and* involved current or former patients. Therefore, an individual convicted in another state may not get automatic denial or revocation, even though they would if the same crime was committed in California. MBC recommends that the proposed language be adjusted to address this discrepancy and clarify that bill's restrictions on reinstatement apply to individuals who apply on or after the bill's effective date. At the time of writing, the bill is pending before the Assembly Business and Professions Committee.

During the quarterly [meeting](#), Kerrie Webb, Staff Counsel, stated that this allows the legislature “to give the Board the tools it needs to provide better public protection in this area and in others.” TJ Watkins, a public member, expressed concern that the bill would reach only a small population of patients rather than addressing more common issues that the Board faces. Assemblymember Akilah Weber, the bill’s author, stated during public comment that “AB 1636 seeks to maintain confidence in the medical profession by ensuring physicians convicted of sexual misconduct automatically have their license revoked and cannot acquire or have it reinstated.” Assemblymember Weber also discussed the investigation report conducted by the *Los Angeles Times* in 2021, which stated that the Board reinstated licenses to about 60 percent of petitioning physicians that had their licenses previously revoked or surrendered for sexual misconduct. The Board motioned and approved supporting the bill if amended to include all staff recommendations.

## **The Patient Transparency and Protection Act Seeks to Address Medical Board’s Legislative Request**

[SB 920 \(Hurtado\)](#), as amended on March 29, 2022, would amend sections 2220.5 and 2330 of, and add section 2220.8 to the Business and Professions Code regarding MBC’s ability to request records when conducting investigations. SB 920, known as the Patient Transparency and Protection Act, addresses two of the Board’s [2022 legislative requests](#). First, the Board requested enhanced medical record inspection authority of patient records without the need for patient consent or subpoena so that it may quickly determine whether further investigation is needed and, if so, prepare any necessary subpoenas. Second, the Board requested timely access to pharmacy records when required in an investigation.

The bill would amend section 2220.5 to allow a Board investigator and a medical consultant to inspect the business location and the practitioner's records, including patient and client records, at the Board's discretion. If the Board does not have the patient's consent to review their records, the investigator and consultant may inspect records in the office to determine whether there is good cause to subpoena those records for investigative purposes.

SB 920 would also add section 2220.8 to allow the Board to request records from a pharmacist when investigating a licensee and require the pharmacist to respond as though the request came from the California State Board of Pharmacy. Mandating a response consistent with Pharmacy Law ensures that pharmacists provide records in a specific timeframe, rather than waiting an unknown timeframe that could lead to investigation delays.

Finally, the bill would amend section 2330 to allow the Board to consider complainant statements for purposes of adjudication. According to public Board Member TJ Watkins, the current process ignores the harm that patients say they experienced because the Board is unable to hear these statements during disciplinary hearings.

At this writing, while the Board has not yet taken a formal position on the bill, Executive Director William Prasifka sent a letter on the Board's behalf to the author, thanking her for incorporating two of MBC's stated legislative priorities into the bill. In addition, the Senate Business Professions & Economic Development Committee was scheduled to hold a hearing on the bill on April 4, 2022, but it was canceled at the author's request.

## **Board Seeks Significant Reform to Address Recent Controversies**

On January 5, 2022, the President and Vice President of MBC sent a [letter](#) on behalf of the Board to California Senate President Pro Tempore Toni Atkins and Assembly Speaker Anthony Rendon, copying all members of the legislature and seeking legislative support for its proposed extensive changes to the Medical Practice Act to enhance public protection. The letter attaches a nine-page memo containing a series of detailed legislative proposals that the Board approved at its November 2021 [meeting](#) (Agenda Item 13) and describing specific areas where stricter reforms are needed, as well as requesting an increase in licensing fees on doctors.

The push for reform stems from a [bombshell interview](#) of a Board member on national news, along with consistent coverage from outlets such as the *Los Angeles Times* regarding the Board's failure to protect the public from bad doctors. Eserick "TJ" Watkins, a public member of the Board, has been outspoken in his belief that the Board is failing to discipline doctors seriously, along with his criticism of the heavy influence of physician lobbying groups. The *Los Angeles Times* investigated and reported on many instances of the Board reinstating licenses for physicians who had lost their licenses for [sexual misconduct](#), along with cases where [negligent doctors](#) were allowed to continue to practice.

The Board's letter to legislators requests a series of specific reforms. First, the Board requested a lower burden of proof to make it more efficient and less expensive to discipline doctors. According to the letter, although medical boards in 41 other states apply the preponderance of the evidence standard, meaning they need only prove that it is more likely than not that the physician committed misconduct, California's evidentiary standards require the Board

to demonstrate “clear and convincing” proof to a reasonable certainty before actions such as probation, suspension, or revocation can be taken. This higher standard, the Board asserts, has made it more difficult to quickly and easily discipline doctors, as more investigation and time must go into meeting the evidentiary standard.

The Board also asked for an extended waiting period for doctors to petition for the return of their revoked licenses. Currently, the waiting period is three years, though the Board would like it extended to five. The Board also recommended a new application fee for doctors requesting reinstatement in order to cover the costs of the proceedings. The Board currently has no mechanism to cover those costs and spent 1 million dollars on litigation and hearing expenses in the last year.

## **AB 2060 Aims to Address Board Criticisms with Public Member Majority Board**

On February 14, 2022, California Assemblymember Quirk introduced [AB 2060](#), a Board-sponsored bill that would establish a public member majority on the Board.

Specifically, the bill, as introduced, would amend sections 2001, 2007, and 2008 of the Business and Professions Code to increase the number of public members on the Board from seven to eight members. The bill would also require the first vacant licensee position occurring after January 1, 2023, to become a public member position.

The push for this legislation comes from both the Board and the general public. Over the past few years, MBC has received criticism for its leniency toward bad doctors, ranging from negligent doctors to doctors with pending sexual assault charges. The perceived inaction of MBC has resulted in significant distrust by the public, which led to calls for MBC to change the composition of the Board to give the public more sway and more seats at the table.



This bill would shift the Board’s power into the public’s hands. Under current law, the Board is authorized to carry out disciplinary actions against licensees and create panels of at least four members for this purpose. AB 2060 would amend section 2008, which currently prohibits a public majority on panels, to instead prohibit a panel from being comprised of more licensed physicians or surgeons than public members. The significance of this shift is that the public will have more power to carry out disciplinary actions against licensees, which is what consumer advocate boards have been requesting. [\[26:2 CRLR 46–50\]](#)

In a [press release](#) announcing the bill’s introduction, Assemblymember Quirk stated, “[c]onsumer protection boards should be composed of a majority of people who are members of the public, rather than those of the profession they regulate. It is a feature that should be included in all boards.” The press release also quotes Board President Kristina Lawson, who commented on the Board’s hope that a public member majority “will be a meaningful step toward restoring public and stakeholder confidence.” During its contentious sunset review process last year, MBC voted to support its sunset legislation ([SB 806 \(Roth\) \(Chapter 649, Statutes of 2021\)](#)) if amended to provide for a public member majority, but the author opted not to amend the bill as requested. [\[27:1 CRLR 53–57\]](#)

A hearing on the bill is scheduled to take place before the Assembly Business and Professions Committee on April 19, 2022.

## **RULEMAKING**

- **Medical and Midwife Assistant Certifying Agencies:** On February 1, 2022, the Office of Administrative Law (OAL) [approved](#) MBC’s [proposed amendments](#) to sections 1366.3,

1366.31, and 1379.07, Title 16 of the CCR, to eliminate the requirement that medical and midwife assistant certifying agencies be non-profit and require the certifying agencies to be accredited by the National Commission of Certifying Agencies (NCCA). The Board originally published [notice](#) of its intent to amend these sections on June 4, 2021. *[see [27:1 CRLR 46–48](#)]* The new regulations went into effect on April 1, 2022.

- **Discussion of Notice to Consumers:** On January 18, 2022, MBC issued a [report](#) on discussion and possible action in response to public comments regarding the Notice to Consumers. The proposed rulemaking on Notice to Consumers would amend sections 1355.4 and 1379.58 and adopt sections 1378.5 and 1379.4 of Title 16 of the CCR. According to the [Initial Statement of Reasons](#), the proposed language would require the Board to adopt regulations to mandate the required disclosures to consumers. *[See [24:1 CRLR 54](#); [23:1 CRLR 60](#); [27:1 CRLR 59–60](#)]* The public comment period ended on December 27, 2021. Upon review of the public comments, Board staff requested a modification to allow additional time to alert licensees to the changes and notice they must provide.

## LEGISLATION

- [AB 1662 \(Gipson\)](#), as introduced January 18, 2022, would amend section 480 of the Business and Professions Code to allow individuals convicted of a crime to submit to the Board a request for a pre-application determination on whether the prospective applicant may be disqualified from licensure. At the February 11, 2022, quarterly [meeting](#), the Board took the support if amended position. *[A. B&P]*

- [AB 1767 \(Horvath\)](#), as introduced February 2, 2022, would amend various sections, and adds sections 2505.5, 2505.6, 2506.1–2506.9, and repeal sections 2509 and 2514.5 of the Business and Professions Code. The Licensed Midwifery Practice Act of 1993 instructs the Board to provide licensure for midwives and appoint a Midwifery Advisory Council. New section 2505.5 would establish the California Board of Licensed Midwives (CBLM) within the DCA to take over the duties and jurisdiction currently held by the Board. The bill would commence CBLM on January 1, 2023 and would require sunset review by January 1, 2027. New sections 2506.2 and 2506.3 would require CBLM to consist of seven members—two public members appointed by the Speaker of the Assembly and five midwives appointed by the Governor. The Board included this statute change in its [2022 legislative requests](#). [*A. B&P*] [*see 27:1 CRLR 55, 59*]

- [SB 57 \(Wiener\)](#), as amended January 18, 2022, would add and repeal section 11376.6 of the Health and Safety Code, as it relates to controlled substances, until January 1, 2028. The bill would authorize San Francisco, Los Angeles, and Oakland to approve entities to operate overdose prevention programs. These programs would provide a hygienic space supervised by trained staff where people can consume drugs, access sterile consumption supplies, access substance use disorder treatment, and access overdose reversal treatments. The bill would exempt a person from civil liability, professional discipline, or existing criminal sanctions for good-faith conduct. The bill would also clarify that MBC is authorized to take disciplinary action against a licensee that violates the Medical Practice Act in relation to the overdose prevention program. [*A. PubSafe*]

- [SB 1440 \(Roth\)](#), as introduced on February 18, 2022, would amend section 2519.5 of the Business and Professions Code to authorize complaints against midwives to be reviewed by

medical experts and referred to an office for investigation after ten days, without information previously required for a complaint. *[S. BP&ED]*

- [SB 920 \(Hurtado\)](#), as introduced on February 3, 2022, would amend sections 2220.5 and 2330, and add section 2220.8 to the Business and Professions Code to increase transparency and accessibility of the Board. SB 920, also known as the Patient Transparency Act, would authorize independent investigators to inspect and investigate the records of a physician or surgeon rather than just MBC as it was before. New section 2220.8 would allow MBC to request records and other information from pharmacists. According to the author, the [goal](#) of SB 920 is to remove barriers that exist for the Board to investigate complaints and help elevate patient voices (see HIGHLIGHTS). *[S. BP&ED]*

- [SB 1441 \(Roth\)](#), as introduced on February 18, 2022, and as it relates to MBC, would amend section 2501 of the Business and Professions Code to require MBC to review and update as necessary disciplinary policies and procedures annually. *[A. Desk]*

- [AB 1341 \(Garcia\)](#), as amended on April 28, 2021, would add section 110423.7 to the Health and Safety Code. The bill would prohibit the sale of dietary supplements for weight loss and diet pills to anyone under 18 without a prescription. New section 110423.7 would also require retailers to develop health-related notices regarding products, post these notices at purchase counters, and fine retailers \$1,000 for violations. *[S. Rules]*

- [AB 1636 \(Weber\)](#), as amended on April 5, 2022, would amend sections 2231, 2232, and 2307 of the Business and Professions Code to require MBC to deny an initial license application, automatically revoke a license or deny a petition to reinstate a license for individuals

who have committed acts of sexual abuse, misconduct, or relations with a patient (see HIGHLIGHTS). *[A. B&P]*

- [AB 1604 \(Holden\)](#), as amended on March 7, 2022, would amend sections 11140, 18502, 18931, 18933, 18936, 19402, and 19574, and add sections 8310.6, 18553, and 18930.1 to the Government Code. Of note, new section 8310.6 would require state agencies and boards to collect demographic data on ethnic groups. Section 11140 would require at least one state board member or commission member to serve from an underrepresented community. The author [aims](#) to increase diversity and improve upward mobility with AB 1604 after Governor Newsom vetoed his [Upward Mobility Act of 2021](#). *[A. Appr]*

- [AB 1662 \(Gipson\)](#), as introduced January 18, 2022, would amend section 480 of the Business and Professions Code to allow prospective applicants that have been convicted of a crime to submit a pre-application determination to a board regarding their criminal conviction. This would allow boards to decide if the prospective applicant would be disqualified from licensure based on the conviction before going through the full application process. *[A. B&P]*

- [AB 2098 \(Low\)](#), as introduced February 14, 2022, would add section 2270 to the Business and Professions code to establish that it would be unprofessional conduct for a physician or surgeon to spread false information that is contradicted by scientific consensus about COVID-19 to a patient. The Board would consider whether the licensee departed from the standard of care and whether the false information harmed the patient. According to the author, the bill holds physicians and surgeons, who have a high degree of public trust, accountable for providing science-based information. *[A. B&P]*

- [AB 2626 \(Calderon\)](#), as amended April 6, 2022, would amend section 2253 of the Business and Professions code to prohibit the Board from suspending or revoking a physician’s or surgeon’s certificate solely for performing an abortion if it was performed in accordance with the Medical Practice Act and Reproductive Privacy Act. According to the author, the bill would protect licensees who provide abortion care in other states or to out-of-state patients. *[A. Health]*
- [AB 1954 \(Quirk\)](#), as introduced February 10, 2022, would add section 2228.5 to the Business and Professions Code to prohibit physicians and surgeons from denying treatment to a patient based on a positive drug test for THC unless, on a case-by-case basis, the doctor determines that the cannabis use is medically significant to the treatment. The bill would prohibit doctors from being punished for providing treatment and would specify that doctor-recommended cannabis would not constitute illicit substance use. *[A. B&P]*
- [AB 2178 \(Bloom\)](#), as introduced February 15, 2022, would amend section 2168 of the Business and Professions Code to revise the requirements of academic medical centers to train “fellows” rather than “postdoctoral fellows” and have foreign medical graduates in “research” rather than “clinical research.” According to the author, the bill clarifies the types of trainees and learning experiences offered at academic medical centers, which authorize trainees to practice medicine without a license by utilizing special faculty permits. *[A. Appr]*
- [SB 1031 \(Bogh\)](#), as introduced February 15, 2022, would amend sections 701, 703, 1006.5, and 2734 of the Business and Professions Code to reduce the renewal fee for an inactive status license to be no more than one-half of the fee of active license renewal. *[S. BP&ED]*

# LITIGATION

- ***Pappas v. Chang*, 75 Cal. App. 5th 975 (2022).** On March 3, 2022, the First District Court of Appeal [affirmed](#) a trial court’s judgment and explained that a preliminary settlement agreement for medical malpractice containing a mutual confidentiality provision regarding the case, terms, and amount of the agreement, did not violate Business and Professions Code section 2220.7, which voids provisions in settlement agreements that would prohibit another party from contacting or filing a complaint with the Board. The provision did not expressly reference contacting the Board and “should not be applied to preclude such communications.” The court also explained that the two settlement checks of \$29,999.99 and \$70,000.01 did not circumvent the requirement for malpractice insurers to report settlements exceeding \$30,000 to the Board because the release stated \$100,000, regardless of the payment breakdown. The court confirmed three public policy concerns discussed in the Center for Public Interest Law’s (CPIL)<sup>1</sup> [amicus brief](#) regarding inappropriate confidentiality clauses. In concurrence, Justice Kline agreed that the law was not stymied but that Chang’s initial confidentiality provisions were to prevent Pappas from filing a complaint with the Board. Kline also explained that there is “no innocent purpose” for the release to reflect \$29,999.99 as the amount paid “in settlement of all claims.”

- ***Peterson v. Sutter Med. Found.*, No. 3:21-CV-04908-WHO (N.D. Cal., Feb. 2, 2022).** On February 2, 2022, the District Court [granted](#) defendant MBC’s motion to dismiss with prejudice on the state law claims raised by petitioner Peterson. The court granted the motion to dismiss with leave to amend on the federal claims against MBC defendants. Plaintiff Peterson is a

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<sup>1</sup> CPIL changed its name to the Consumer Protection Policy Center (CPPC) in 2021.

medical doctor who alleged that the Sutter network of healthcare facilities unlawfully steered away unprofitable procedures, gave kickbacks to physicians who complied, and punished physicians who did not. Peterson asserted that MBC facilitated these activities by using its disciplinary authority against physicians like him who did not comply. MBC moved to dismiss due to sovereign immunity. The federal civil rights claims against MBC are dismissed as barred by sovereign immunity or absolute immunity. However, Peterson has leave to amend to adequately plead that *Ex parte Young* applies or absolute immunity does not apply. On March 14, 2022, Plaintiff filed his [Second Amended Complaint](#). Defendants' Motion to Dismiss the Second Amended Complaint is scheduled to be heard by the court on June 8, 2022.