

# MEDICAL BOARD OF CALIFORNIA

---

*Interim Executive Director, Reji Varghese: (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. As of January 2023, the MBC has the largest number of licensed physicians than any other state, consisting of approximately 118,000 licensees.

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

## **HIGHLIGHTS**

### **Medical Board of California Undergoes Sunset Review**

On December 30, 2022, the Medical Board of California (MBC) submitted its final [Sunset Oversight Review Report](#) to the legislature. The Sunset Report updates the legislature on past sunset issues and outlines current issues facing the Board.

In its Report, the Board stated that the current issue facing the Board is the possibility of financial insolvency. The Board reported that its financial position has continued to atrophy since the Board's last Sunset Review Report was published. In a letter from MBC President Kristina D. Lawson to Senator Richard D. Roth and Assemblymember Marc Berman, the Board urged legislators to approve the Board's proposals for continued financial resources to combat

insolvency, calling the Board’s financial stability its highest priority in 2023. The Board also stated that a higher fee amount was necessary to maintain the Board’s budget than originally necessary, and the Board was required to take out two additional loans on top of the loan they were granted by the Bureau of Automotive Repair in Fiscal Year 2021–2022 (page iv).

One way the Board is addressing the fiscal deficit is by introducing electronic wallet cards. All licensees are allowed to create their own Pocket License Cards beginning April 2022 that are available for personal and/or professional use. The use of Electronic Pocket License Cards allows the Board to shift the cost of card production to licensees and allows licensees to receive a hard copy of their license card instantly instead of waiting 4–6 weeks for a plastic card in the mail. The Board also stated that research is underway on forming digital license cards through apps like Apple Wallet and Google Pay that automatically update a licensee’s card when their information is updated (page 16).

Another proposal put forth in the Report is the creation of a new staff unit to help guide consumers through the complaint process. The “Complainant Liaison Unit” would supplement the Board’s existing enforcement personnel and improve communications with consumers about the Board’s mission and enforcement programs and processes. Responsibilities would include communication with consumers prior to filing a complaint, support throughout the process, and evaluating complaint closure review requests. Staff project that the Liaison Unit would require adding four new Board employees (page 186).

The Board additionally addressed its ongoing efforts to combat the opioid epidemic, renaming the former “Death Certificate Project” to the “Prescription Review Program” (PRP). The PRP proactively investigates deaths due to the prescription and overdose of opioids and conducts

a full field investigation into the prescribing physician and the prescribing history. As of October 5, 2022, the Board, through the use of the PRP, has determined that street drugs, through illegal means of obtainment, account for a large percentage of the opioid cases they investigated (page 18).

The Board's Report also listed changes in staff leadership. In late 2022, former MBC Executive Director William Prasifka resigned. No permanent replacement for the position of Executive Director was found; however, Deputy Director Reji Varghese currently fills the position while the Board begins the selection process at the beginning of 2023 (page 14).

## **COVID-19 Misinformation Bill Creates Contradicting Litigation**

[AB 2098 \(Low\)](#), or more commonly known as the COVID-19 misinformation bill, was signed into law on September 30, 2022, by Governor Gavin Newsom (Chapter 938, Statutes of 2022), and enacted as law on January 1, 2023. Once enacted, the bill codified section 2270 to the Business and Professions Code, a section that governs MBC. Section 2270 designates the dissemination of mis- and/or disinformation related to COVID-19 by any licensed physician and/or surgeon as “unprofessional conduct” that MBC and/or the Osteopathic Medical Board of California can take action against. [see [28:1 CRLR 10-12](#)]

After AB 2098 was signed into law, two major lawsuits emerged: *Hoeg, et al. v. Newsom, et al.*, Case No. 2:22-cv-02147 (E.D. Cal. 2023), and *McDonald v. Lawson*, Case No. 8:22-cv-01805-FWS-ADS (C.D. Cal. 2022) (see LITIGATION).

In *McDonald v. Lawson*, Plaintiffs, two California licensed physicians, alleged AB 2098 violated the First and Fourteenth Amendments of the United States Constitution for impermissible

content and viewpoint restriction in violation of the First Amendment, and vagueness in violation of the Due Process Clause of the Fourteenth Amendment. On December 28, 2022, Judge Slaughter ruled the law incidentally burdens speech, but it is rationally related to a legitimate state interest and is within a longstanding tradition of regulation of the medical field. The *McDonald* decision allowed AB 2098 to stay as law until *Hoeg v. Newsom* was decided.

In *Hoeg v. Newsom*, Plaintiffs, physicians in California, also argued that AB 2098 was unconstitutional on First and Fourteenth Amendment grounds. However, unlike *McDonald*, Judge Shubb, serving on the Eastern District Court of California, granted Plaintiffs a preliminary injunction on the operation of the law, making AB 2098 currently unenforceable.

## MAJOR PUBLICATIONS

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

- [Quarterly Newsletter](#), First Quarter Edition Volume 164, Medical Board of California, April 11, 2023 (notifies consumers of Board and committee meetings, states important changes to electronic prescribing, answers what to do if a complaint is filed against you as a physician, and features informative pamphlets for consumers and licensees).
- [Strategic Plan](#), Medical Board of California, February 28, 2023 (roadmaps the Board's plan that it follows until 2028 to achieve consumer protection and establishes goals in licensing, enforcement, regulation, and more).

## RULEMAKING

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

- **Notice to Consumers:** On November 28, 2022, the OAL [approved](#) the [modified text](#) of the Notice to Consumers, effective January 1, 2023. The proposed rulemaking amends sections 1355.4 and 1379.58 and adopts 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](#); [28:1 CRLR 13](#)] According to the approval, the regulatory action requires certain licensed physicians to provide notice they are licensed and regulated by the Board, and that patients may check on and file a complaint against their license to the Board.

## LEGISLATION

- [AB 1369 \(Bauer-Kahan\)](#), as amended March 23, 2023, would add section 2052.5 to the Business and Professions Code to allow eligible out-of-state physicians and surgeons to practice in California without a license if the practice is limited to providing immediate, emergency care via telehealth. The Board does not currently have a date set for votes on this bill. [A. Appr]
- [AB 1646 \(Nguyen\)](#), as amended March 23, 2023, would amend section 2065 of the Business and Professions Code to allow out-of-state medical residents during their postgraduate guest rotation training program in California to practice medicine for 90 days and receive compensation. The Board does not currently have a date set for votes on this bill. [A. B&P]
- [SB 815 \(Roth\)](#), as introduced February 17, 2023, would amend section 2096 of the Business and Professions Code in response to MBC’s recently published sunset review and need for solvency. The bill makes various changes to MBC’s operation until January 1, 2028, including adding two public members to the MBC and increasing fees for surgeon and physician licensees

in order to ensure the MBC's solvency. At MBC's interim meeting on March 23, 2023, the Board [deferred](#) the discussion to a later Board meeting. *[S. BP&ED]*

- [AB 242 \(Wood\)](#), as introduced January 13, 2023, would amend section 2401 of the Business and Professions Code to end the prohibition on federal certified critical access hospitals (CAHs), a designation given to certain rural hospitals by the Centers for Medicare and Medicaid Services, employing physicians and charge for those services. The Board does not currently have a date set to discuss this bill. *[S. Appr]*

- [SB 784 \(Becker\)](#), as amended March 21, 2023, would amend section 2401 of the Business and Professions Code to prohibit a health care district from interfering with, controlling, or otherwise directing the judgment of a physician and/or surgeon. The Board does not currently have a date set for votes on this bill. *[S. Health]*

- [AB 834 \(Irwin\)](#), as amended March 29, 2023, would amend section 2416 of the Business and Professions Code to authorize doctors of podiatric medicine (doctors of the foot and ankle) to own an equal or majority interest in a professional partnership with physicians. At MBC's interim meeting on March 23, 2023, the Board [deferred](#) the discussion to a later Board meeting. *[A. Appr]*

- [SB 358 \(Nguyen\)](#), as amended March 22, 2023, would amend section 2427 of the Business and Professions Code to delete the requirement that all accrued renewal fees be paid upon renewal of a physician's expired license. At this writing, the Board does not currently have a date set for votes on this bill. *[S. BP&ED]*

- [AB 826 \(Chen\)](#), as introduced February 13, 2023, would amend section 2496 of the Business and Professions Code to end the requirement that licensed doctors of podiatric

medicine satisfy one of eight criteria for ongoing education, and seeks to standardize renewal requirements for those holding medical degrees. At this writing, the Board does not currently have a date set for votes on this bill. *[A. Appr]*

## LITIGATION

- ***Tracy Hoeg, M.D., Ph.D., et al. v. Gavin Newsom, et al.*, No. 2:22-cv-01980 WBS AC (E.D. Cal. 2023)**. On January 25, 2023, Judge William B. Shubb entered the [Memorandum and Order Re: Plaintiffs’ Motions for Preliminary Injunction](#). According to the Memorandum and Order, the Plaintiffs filed motions seeking a preliminary injunction to disallow the State of California from enforcing AB 2098. The district court granted Plaintiffs’ request for a temporary halt on enforcing AB 2098, citing that the language in AB 2098 does not have an established technical meaning, and is thus unenforceable (see HIGHLIGHTS). In this lawsuit, Plaintiffs claim that [AB 2098 \(Chapter 938, Statutes of 2022\)](#), signed into law by Gavin Newsom on September 30, 2022 as the COVID-19 misinformation bill that disallows physicians from giving mis- and disinformation related to COVID-19, and classifies the information as “unprofessional conduct” is unconstitutional under the First and Fourteenth Amendments of the United States Constitution.
- ***McDonald, et al. v. Kristina D. Lawson, et al.*, Case No. 8:22-cv-01805 (C.D. Cal. 2023)**. On October 4, 2022, two plaintiffs, licensed physicians from California, filed a [complaint](#) against the California Attorney General and members of MBC who enacted AB 2098, the COVID-19 misinformation bill. The district court judge ruled that the law was constitutional and related to a state interest. The decision in *McDonald* was countered by the preliminary injunction ordered by the *Hoeg* decision (see HIGHLIGHTS).