

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

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.

On June 1, 2023, Governor Newsom appointed TJ Watkins as a public member. Watkins is the owner of The Next Level Coaching and serves on the board of South Coast Foundation, a US-based private foundation that funds children infected and affected by HIV/AIDS in South Africa, as a public member on the Board. On June 5, 2023, the Governor reappointed Dr. Asif Mahmood, a physician for pulmonary and hospitalist associates, and Dr. Richard Thorp, a physician supervisor for Paradise Medical Group, to the Board. In addition, on June 1, 2023, the Speaker of the Assembly appointed public member David Lee, the Chairman and CEO of Hing Wa Lee Group, which consists of Hing Wa Lee Jewelers, Hing Wa Lee Development & Real Estate Holdings, and Investment division.

At this writing, the Board has three vacancies—two physicians and one public member—which the Governor must fill.

On Friday, June 23, 2023, the Board [swore](#) in a new Executive Director, Reji Varghese. Reji Varghese first joined the Board as deputy director in August 2020 and was appointed by the Board as interim executive director in February 2023.

HIGHLIGHTS

Medical Board of California Responds to Legislature's Sunset Review Issues

On April 26, 2023, MBC published a [response](#) to legislative concerns from the Senate Committee on Business, Professions and Economic Development and the Assembly Committee of Business and Professions regarding its 2022 Sunset. The Joint Committee brought up a total of 18 concerns, which the Board responded to individually in its response letter.

The first issue lawmakers posed to the Board was the benefit of including additional members of the public in the composition of the Board. The Board stated it “recognizes that some members of the public have a perception that a physician-majority Board favors licensees in Board policies and disciplinary decisions” (p. 2). MBC stated that creating a public member majority is intended to restore public trust and confidence in the Board’s operations.

Another notable issue posed by the legislature was a recommendation to establish a formal liaison or unit to assist patients and increase the efficacy of the complaint process. MBC responded that a new Complainant Liaison Unit is estimated to cost approximately \$450,000, adding that unless the Board’s financial position improves, it would be impractical to add this new unit (p. 4). MBC requested that the legislature approve a substantial fee increase to improve the Board’s overall financial situation. MBC also asked lawmakers to add language to the Medical Practice Act if it wants this unit to be established within a certain timeframe.

In the response above, the Board cites financial struggles, which are a theme of this Sunset Review process for the MBC. Lawmakers asked the Board about increasing revenues and its

continued financial insolvency and reliance on loans. MBC responded with agreement that this is a priority and that the Board will continue to seek viable solutions.

Lawmakers also addressed the burden of proof standard for MBC, which is “clear and convincing” instead of “preponderance of the evidence” (the standard in most states and jurisdictions). MBC responded, “It is not clear to the Board how to apply a variable standard of proof that depends on the severity of discipline to be imposed” (p. 9). MBC also stated that changing the standard of proof would not change its typical investigative and prosecutorial practices; however, it may be expected to act on cases with slightly less proof.

In its April 26, 2023, [letter](#) to the Joint Committee, the Board addressed and responded to the 18 issues raised by the committee.

Governor Newsom signed SB 815 on September 20, 2023 (Chapter 294, Statutes of 2023). The bill renews the existence of MBC until January 1, 2028. In its final form, the bill established a Complainant Liaison Unit (pending funding through the Budget Act) and increased initial and renewal licensing fees. SB 815 did not create a public-membership majority or amend the “clear and convincing” burden of proof for disciplinary proceedings.

Governor Signs Bills Expanding Protections for Health Care Providers Regarding Reproductive and Gender Affirming Health Care Services

On September 27, 2023, Governor Newsom signed two bills, [SB 345 \(Skinner\) \(Chapter 260, Statutes of 2023\)](#) and [AB 1707 \(Pacheco\) \(Chapter 258, Statutes of 2023\)](#), to protect California’s doctors and other healthcare providers from criminalization, civil litigation, and licensure discipline regarding reproductive and gender-affirming health care services that are

illegal in other states but are legal in California. MBC supported both bills. In passing these protections, Governor Newsom [stated](#):

Radical politicians continue their all out assault on women's health care with dangerous and deadly consequences. The right to an abortion is enshrined in California's constitution. We will continue to protect women and health care workers who are seeking and providing basic care.

Previous law prohibited MBC, as well as other Boards, from denying an application for licensure or suspending, revoking, or imposing discipline upon a licensee if the licensee was disciplined or convicted in another state solely for performing an abortion in that state. AB 1707 prohibits these Boards from 1) denying an application or imposing discipline; 2) denying, removing, or restricting the licensee's privileges; or 3) denying, suspending, revoking, or limiting a licensee based on a civil judgment, criminal conviction, or disciplinary action imposed by another state's law that interferes with a person's right to receive sensitive services that are lawful in California. "Sensitive services," defined in Civil Code section 56.05, include mental or behavioral health, sexual and reproductive health, and gender-affirming care.

While AB 1707 protects the licensee's status from a Board's actions, SB 345 includes AB 1707's provisions and further protects a licensee's legally protected health care activity from enforcement of other states' laws that criminalize or limit the legally protected health care activity. "Legally protected health care activity" includes the exercise of reproductive health and care services or gender-affirming health care services secured by the Constitution or laws of California. These protections include: 1) prohibiting the collection, use, disclosure, sale, or retention of personal information of a person who is physically located at or near a family planning center; 2) authorizing a person to bring a civil action and collect damages against a person who engages in abusive litigation that infringes on or interferes with a legally protected health care activity; 3)

permitting a court to grant a stay of enforcement of another state’s judgment; 4) prohibiting a state or local government employee (or a person acting on their behalf) from providing information or using resources to further an investigation on an individual for a legally protected health care activity that occurred in California or would be legal in California; 5) prohibiting a magistrate from issuing a warrant for an individual who allegedly violated the laws of another state regarding sexual or reproductive health care that is lawful in California; and 6) prohibiting a judge from ordering a witness to appear regarding sexual or reproductive health care that is lawful in California. Further, this bill expands an exemption to murder to include a person pregnant with a fetus who committed an act that resulted in the death of a fetus under specific circumstances.

Lawmakers emphasized that these bills are necessary to ensure that California healthcare practitioners can provide reproductive and gender-affirming care to all their patients, regardless of their patient’s location. The California legislature aims to do everything it can to protect what it identified as draconian laws of other states.

MAJOR PUBLICATIONS

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

- [Quarterly Newsletter](#), Second Quarter Edition Volume 165, Medical Board of California, August 7, 2023 (notifies consumers of Board and committee meetings, covers guidelines for prescribing controlled substances for pain relief, answers what to do if a complaint is filed against you as a physician, and highlights California Newborn Screening Program).
- [Guidelines for Prescribing Controlled Substances for Pain](#), Medical Board of California, July 2023 (Guidelines created to assist physicians in how and when to prescribe opioids

to patients who are experiencing pain. These guidelines are a response to the nationwide declaration of prescription drug abuse as an epidemic and the rise of drug overdoses as a primary cause of accidental deaths.)

- [**Enforcement Monitor Final Report Findings and Recommendations**](#), Alexan RPM Inc. for the Department of Consumer Affairs, August 18, 2023 (report pursuant to the requirements of [**SB 806 \(Roth\) \(Chapter 649, Statutes of 2021\)**](#) which requires an independent enforcement monitor's evaluation of the Board's enforcement activities with specific concentration on the handling and processing of complaints, and the timely application of sanctions or discipline imposed on licensees and persons to protect the public. The report includes issue summaries and recommendations for complaints, investigations, discipline, and demographic data analysis.)

- [**Annual Report**](#), Medical Board of California, October 2, 2023 (The report outlines the Board's activities from July 2022 to June 2023, covering budget, enforcement, licensing stats, sunset review, guidelines updates, strategic plans, leadership changes, process improvements, and innovations.)

RULEMAKING

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

- **Physician and Surgeon Health and Wellness Program, California Code of Regulations Title 16, Professional and Vocational Regulations Division 13, Chapter 2, Multiple Sections:** On September 21, 2023, the Board gave [notice](#) of proposed rulemaking affecting Title 16, Division 13, Chapter 2, Article 2, of the CCR amending sections 1357, 1357.1, 1357.9, and Article 4, section 1361.5(c)(3); repeal sections 1357.2, 1357.3, 1357.4, 1357.5,

1357.6, and 1357.8; and adopt sections 1357.10, 1357.11, 1357.12, 1357.13, and 1357.14. These changes would establish a Physician and Surgeon Health and Wellness Program (PHWP). This program was authorized by [SB 1177 \(Galgiani\) \(Chapter 591, Statutes of 2016\)](#), under Business and Professions Code section 2340, which states MBC could establish a PHWP to provide early identification of, and appropriate interventions, to support rehabilitation for substance abusing licensees. In its [Initial Statement of Reasons](#), the Board stated this regulation will repeal old text relating to the Impaired Physician Program, which previously implemented the Board's diversion program and was terminated as of July 2008. The 45-day comment period ended on November 14, 2023.

- **Citation and Fine, California Code of Regulations Title 16, Division 13, Chapter 2, Article 6, Section 1364.10 and 1364.11:** On June 6, 2023, the Board gave [notice](#) of [proposed language](#) to amend sections 1364.10 and 1364.11 of Division 13 of Title 16 of the CCRs. In the [Initial Statement of Reasons](#), the Board states that the proposed regulation would make the citation and fine regulation gender neutral, make non-substantive changes to improve readability, clarify that the Board is authorized to issue a citation to any of its licensees and clarify that any fine levied by the Board official shall not exceed the amount specified by the applicable statute. The period for public comment on this regulation ended on November 14, 2023, and the proposed rule is awaiting approval from OAL.

LEGISLATION

- [SB 815 \(Roth\)](#), as amended on September 11, 2023, amends and repeals various sections of Business and Professions Code, as it relates to MBC, it amends section 123110 of the Health and Safety Code, in response to MBC's recently published sunset review and need for

solvency. The bill extended MBC’s operation until January 1, 2028, and increases fees for surgeon and physician licensees in order to attempt to ensure the MBC’s solvency. Governor Newsom signed SB 815 on September 30, 2023 (Chapter 294, Statutes of 2023) (see HIGHLIGHTS).

- [AB 1369 \(Bauer-Kahan\)](#), as amended August 24, 2023, adds 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 [voted](#) to oppose the bill at its quarterly meeting on May 18, 2023. The Board stated, “[e]liminating licensing requirements to practice medicine especially for a fragile patient population erodes consumer protection. . . . this bill is unnecessary, and it increases the risk that patients will receive treatment below the standard of care.” Governor Newsom signed AB 1369 on October 13, 2023 (Chapter 837, Statutes of 2023).

- [AB 1646 \(Nguyen\)](#), as amended September 8, 2023, amends 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 [voted](#) to support this bill on May 18, 2023. Governor Newsom signed AB 1646 on September 27, 2023 (Chapter 257, Statutes of 2023).

- [AB 242 \(Wood\)](#), as introduced January 13, 2023, amends section 2401 of the Business and Professions Code to extend an exception to 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. Previous law made the exception operable until January 1, 2024. Governor Newsom signed AB 242 on October 10, 2023 (Chapter 641, Statutes of 2023).

- [AB 834 \(Irwin\)](#), as amended May 24, 2023, amends section 2416 of the Business and Professions Code. Previously, the Medical Practice Act required physicians and surgeons or osteopathic physicians and surgeons to have a majority of the partners and partnership interests in a professional partnership with doctors of podiatric medicine (doctors of the foot and ankle). This bill will authorize doctors of podiatric medicine to have a majority interest in a professional partnership with physicians and surgeons or osteopathic physicians and surgeons. The Board did not support or oppose the bill. Governor Newsom signed AB 834 on September 8, 2023 (Chapter 166, Statutes of 2023).

- [AB 826 \(Chen\)](#), as introduced February 13, 2023, amends 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. Governor Newsom signed AB 826 on July 27, 2023 (Chapter 122, Statutes of 2023).

- [AB 470 \(Valencia\)](#), as amended on March 13, 2023, a Board supported bill, amends section 2190.1 of the Business and Professions Code to specify how an association that accredits continuing medical education courses taken by MBC licensed physicians and surgeons should update standards for those courses. Specifically, continuing education courses may include activities to improve the quality of physician-patient communication, as well as require the advisory group to be informed of federal and state threshold language requirement to meet the needs of California's changing demographics. Governor Newsom signed AB 470 on October 7, 2023 (Chapter 330, Statutes of 2023).

- [AB 1395 \(Garcia\)](#), as introduced on February 17, 2023, amends section 853 of the Business and Professions Code to authorize MBC to issue a license for three years to an individual

who would otherwise be eligible for licensure under the Mexico Pilot Program but does not provide MBC an individual taxpayer identification number or social security number (SSN). The bill requires the individual to seek a three-year visa and SSN within 14 days of being issued a license pursuant to the conditions and forbids the individual from practicing medicine until they apply for a visa and obtain an SSN. The Board supported this bill. Governor Newsom signed AB 1395 on September 22, 2023 (Chapter 205, Statutes of 2023).

- [AB 1707 \(Pacheco\)](#), as amended on August 22, 2023, adds sections 805.9 and 850.1 to the Business and Professions Code, and to add sections 1220.1 and 1265.11 to the Health and Safety Code, relating to disciplinary actions based on another state’s law. This bill protects licensed health care professionals and applications from being denied a license or subjected to discipline based on action imposed by another state based solely on the application of a law that interferes with a person’s right to receive sensitive services that would be lawful in California. The Board [voted](#) to support this bill on May 19, 2023. Governor Newsom signed AB 1707 on September 27, 2023 (Chapter 258, Statutes of 2023) (see HIGHLIGHT).

- [AB 1731 \(Santiago\)](#), as introduced on February 17, 2023, amend section 11165.4 of the Health and Safety Code, relating to controlled substances. This legislation provides an exemption for healthcare practitioners in the emergency department of a general acute care hospital who prescribe, order, administer, or provide buprenorphine or other buprenorphine-containing controlled substances from the current obligation to consult the state’s prescription drug monitoring program database, known as the Controlled Substance Utilization Review and Evaluation System (CURES). The Board [voted](#) to support this bill on May 18, 2023. Governor Newsom signed AB 1731 on September 1, 2023 (Chapter 144, Statutes of 2023).

- [SB 345 \(Skinner\)](#), as amended on September 1, 2023, amends and repeals various sections of the Business and Professions Code, Civil Code, Education Code, Code of Civil Procedure, Welfare and Institutions Code, Probate Code, and the Health and Safety Code. This legislation establishes multiple protections to prevent the enforcement of laws from other states that forbid, criminalize, penalize, authorize civil liability, or otherwise disrupt providers in California providing reproductive or gender-affirming healthcare services. The Board [voted](#) to support this bill on May 18, 2023. Governor Newsom signed SB 345 on September 27, 2023 (Chapter 260, Statutes of 2023) (see HIGHLIGHT).

- [SB 372 \(Menjivar\)](#), as amended on September 1, 2023, add section 27.5 to the Business and Professions Code, relating to professions and vocations. This bill requires a licensing entity within DCA, such as the MBC, to update licensee records if it receives government-issued documentation showing that the licensee’s legal name or gender has changed (see 29:1 CRLR 122). The Board [voted](#) to support this bill if amended on May 18, 2023, and the Board registered support for the bill in its final form. Governor Newsom signed SB 372 on September 23, 2023 (Chapter 225, Statutes of 2023).

- [SB 544 \(Laired\)](#), as amended on September 8, 2023, amends section 11124 of, to amend, repeal, and add section 11123.5 of, and to add and repeal section 11123.2 of, the Government Code, relating to teleconferencing. This bill revises and repeals certain teleconference requirements under the Bagley-Keene Open Meeting Act that requires all meetings of a state body be open and public until January 1, 2026, and allows for meetings via teleconferencing (see 29:1 CRLR 121). The Board [voted](#) to support this bill on May 18, 2023. Governor Newsom signed SB 544 on September 23, 2023 (Chapter 225, Statutes of 2023).

The following bills, reported in Volume 28, No. 2 (Spring 2023), died in committee or otherwise failed to be enacted in 2023: [SB 784 \(Becker\)](#), related to employment in healthcare districts, and [SB 358 \(Nguyen\)](#), related to renewal of expired licenses: payment of accrued fees.

LITIGATION

- *Tracy Hoeg, M.D., Ph.D., et al. v. Gavin Newsom, et al.*, No. 2:22-cv-01980 WBS AC (E.D. Cal.). On November 1, 2023, Judge William B. Shubb, on the court’s own motion, set a [hearing](#) on December 18, 2023, to address whether additional related actions to this case are moot following the California Legislature’s repeal of Business and Professions Code section 2270. This code was the heart of the complaint that alleged this law violated the Plaintiff’s constitutional rights to free speech. All parties were ordered to file separate briefs addressing the mootness question on or before November 27, 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. 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.)***. 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. There were no updates on this case during the reporting period.