

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 1440 (Roth) – As Introduced February 18, 2022

SENATE VOTE: 33-0

SUBJECT: Licensed Midwifery Practice Act of 1993: complaints

SUMMARY: Provides that if the Medical Board of California (MBC) does not receive specified information about a quality of care complaint against a licensed midwife (LM) within 10 business days of requesting it, the complaint may be reviewed by medical experts and referred for investigation without that information.

EXISTING LAW:

- 1) Enacts the Medical Practice Act, which provides for the licensure and regulation of physicians and surgeons, LMs, medical assistants, registered polysomnographic trainees, registered polysomnographic technicians, registered polysomnographic technologists, research psychoanalysts, and student research psychoanalysts. (Business and Professions Code (BPC) §§ 2000 *et seq.*)
- 2) Establishes the MBC, a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members, including 7 public members and 8 physicians, subject to repeal on January 1, 2024. (BPC § 2001)
- 3) Provides that protection of the public shall be the highest priority for the MBC in exercising its licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2001.1)
- 4) Entrusts the MBC with responsibility for all of the following:
 - a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
 - b) The administration and hearing of disciplinary actions.
 - c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.
 - d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.
 - e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.
 - f) Approving undergraduate and graduate medical education programs.

- g) Approving clinical clerkship and special programs and hospitals.
 - h) Issuing licenses and certificates under the board's jurisdiction.
 - i) Administering the board's continuing medical education program.
- 5) Authorizes the MBC to appoint panels of at least four of its members for the purpose of fulfilling its disciplinary obligations, and requires that a majority of the panel members be physicians. (BPC § 2008)
 - 6) With approval from the Director of Consumer Affairs, authorizes the MBC to employ an executive director as well as investigators, legal counsel, medical consultants, and other assistance, but provides that the Attorney General is legal counsel for the MBC in any judicial and administrative proceedings. (BPC § 2020)
 - 7) Allows the MBC to select and contract with necessary medical consultants who are licensed physicians to assist it in its programs. (BPC § 2024)
 - 8) Empowers the MBC to take action against persons guilty of violating the Medical Practice Act. (BPC § 2220)
 - 9) Provides that if the MBC does not receive information it is required to request as part of a complaint against a physician and surgeon within 10 working days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without that information. (BPC § 2220.08)
 - 10) Establishes the Licensed Midwifery Practice Act of 1993, which provides for the licensure and regulation of LMs by the MBC. (BPC §§ 2505 *et seq.*)
 - 11) Authorizes an LM to attend cases of normal pregnancy and childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn. (BPC § 2507)
 - 12) Requires the MBC to create and appoint a Midwifery Advisory Council consisting of licensees of the board and members of the public who have an interest in midwifery practice, including, but not limited to, home births, of which half must be LMs. (BPC § 2509)
 - 13) Authorizes the MBC to suspend, revoke, or place on probation the license of a midwife for various offenses. (BPC § 2519)
 - 14) Requires the MBC to request and review the following information regarding a complaint against an LM involving quality of care:
 - a) Relevant client records.
 - b) The statement or explanation of the care and treatment provided by the LM.
 - c) Any additional expert testimony or literature provided by the licensed midwife.

- d) Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the midwifery standards of care.

(BPC § 2519.5)

THIS BILL:

- 1) Provides that if the MBC does not receive the information it is required to request regarding a quality of care complaint against an LM within 10 business days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without the information.
- 2) Expressly states that nothing in the law amended by the bill shall impede the board's ability to seek and obtain an interim suspension order or other emergency relief.

FISCAL EFFECT: Pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Purpose. This bill is sponsored by the author, who is Chair of the Senate Committee on Business, Professions, and Economic Development.

Background.

In addition to licensing physicians and surgeons, the MBC has jurisdiction over a number of other professionals, including LMs. An LM is authorized to attend cases of normal pregnancy and childbirth and to provide prenatal, intrapartum, and postpartum care. The MBC receives guidance on midwifery issues through a Midwifery Advisory Council. The MBC uses its disciplinary guidelines for LMs; however, complaints against LMs must be reviewed by medical experts who have education, training, and expertise in midwifery. The MBC has reported that disciplinary actions filed against LMs are small, proportionate with a small LM population of approximately 484 LMs currently licensed in California.

The Licensed Midwifery Practice Act contains many of the same provisions relating to investigation and enforcement procedure for complaints against LMs as it does for complaints against physicians and surgeons. Both Acts require the MBC to request and review all of the following:

1. Relevant patient records.
2. The statement or explanation of the care and treatment provided by the licensee.
3. Any additional expert testimony or literature provided by the licensee.
4. Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the standard of care.

However, the two Acts are currently unaligned in that the Medical Practice Act allows for a complaint to be reviewed by medical experts and referred for investigation without reviewing the above information if it has not been provided within 10 working days of the MBC's request. This language is not currently mirrored in the Licensed Midwifery Practice Act. The MBC has indicated that it is important to reconcile the two Acts to provide the MBC with the same authority to review and investigate complaints against LMs that it has for physicians and surgeons. Making this technical change will safeguard against unnecessary delays in taking action to protect the public following a complaint against an LM.

Current Related Legislation. AB 1767 (Boerner Horvath) would establish an independent Board of Licensed Midwives within the DCA. *This bill did not receive a hearing in this committee.*

Prior Related Legislation. SB 806 (Roth, Chapter 649, Statutes of 2021) extended the sunset date for the MBC and provided that complaints against LMs must be reviewed by medical experts who have education, training, and expertise in midwifery.

ARGUMENTS IN SUPPORT:

The **Medical Board of California** (MBC) supports this bill. According to the MBC, the bill “makes clear the Board’s authority to refer quality-of-care complaints about a LM to the field for an investigation, even if we do not receive the information described in Business and Professions Code (BPC) section 2519.5. This conforms to the same process provided for comparable physician and surgeon complaints, as contained in BPC section 2220.08.”

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Medical Board of California

REGISTERED OPPOSITION:

None on file.

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